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ABSTRACT

This report, one of an annual series, analyzes a number of crucial topics that could affect educational negotiations in New Jersey during the year. The articles cover the scope of negotiations; agency shop negotiations; when to start bargaining; contract clauses dealing with union recognition, teacher transfers, and payment for unused sick leave upon retirement; the impacts of budgetary ceilings and inflation on negotiation; the ramifications of opening schools during strikes; and leaves for maternity, pregnancy disability, and child care. An extensive analysis of the New Jersey Education Association's sample agreement for 1981-82 constitutes the bulk of the document. A brief bibliography identifying relevant publications and films and a list of recent court decisions affecting negotiations complete the report. (Author/PGD)

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1981

Negotiations 1981

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Contents

V Introduction

1 The Scope of Negotiations

Agency Shop Negotiations

6 When to Start Bargaining

7 An Analysis of Selected Contract Clauses

11 Caps, Inflation and Negotiations

14 Opening Schools During a Strike

16 Maternity, Pregnancy Disability, and Childcare Leaves: An Analysis with Recommendations

20 Bibliography

22 Decisions Affecting Negotiations

27 NJSBA Analysis of the NJEA Sample Agreement for 1981-82

Contents of the NJSBA Analysis of the NJEA Sample Agreement for 1981-82

28 Preamble
28 Article I. Recognition
29 Article II. Negotiation of Successor Agreement
30 Article III. Grievance Procedure
34 Article IV. Teacher Rights
37 Article V. Association Rights and Privileges
38 Article VI. Teacher Work Year
39 Article VII. Work Hours and Work Load
44 Article VIII. Nonteaching Duties
45 Article IX. Teacher Employment
46 Article X. Salaries
47 Article XI. Teacher Work Stations
49 Article XII. Promotions
50 Article XIII. Accredited Evening High School - Summer School - Home Teaching and Federal Programs
51 Article XIV. Teacher Evaluation
54 Article XV. Fair Dismissal Procedure
56 Article XVI. Complaint Procedure
57 Article XVII. Teacher Facilities
58 Article XVIII. Teacher-Administration Liaison
58 Article XIX. Instructional Council
59 Article XX. Sick Leave
60 Article XXI. Temporary Leaves of Absence
62 Article XXIII. Extended Leaves of Absence
64 Article XXIV. Sabbatical Leaves
65 Article XXV. Professional Development and Educational Improvement
66 Article XXVI. Supervision of Student Teachers
68 Article XXVII. Protection of Teachers, Students and Property
69 Article XXVIII. Maintenance of Classroom Control and Discipline
70 Article XXIX. Insurance Protection
71 Article XXX. Personal and Academic Freedom
72 Article XXXI. Books and Other Instructional Materials and Supplies
73 Article XXXII. Deduction From Salary
73 Article XXXIII. Miscellaneous Provisions
74 Article XXXIV. Duration of Agreement
75 Article _____. Representation Fee

Introduction

This publication is intended to provide board members and administrators with a practical guide to negotiations with teacher unions. It does not attempt to tell you "all you need to know about collective bargaining." A single book could not be that comprehensive and still be as timely as we have tried to make *Negotiations 81* and its predecessors in this series.

Instead, this book gives the school district negotiator an up-to-date analysis of certain crucial topics that will affect educational negotiations this year, and a revised analysis of the sample teachers' collective bargaining agreement distributed by the New Jersey Education Association. Readers looking for more information on the negotiations process should refer to these articles in previous editions of this book:

Negotiations 79

- The Meaning of Good Faith Bargaining
- Recordkeeping
- At the Table
- Negotiating Committees and the Board
- Timing
- Board Proposals
- Impasse Procedures

Negotiations 80

- Employee Grievances
- Negotiating Effective Grievance Procedures
- An Analysis of Selected Contract Clauses (Sabbatical Leave, Personal Leave and Tuition Reimbursement)
- Balancing Management Rights and the PERC Law
- The Use of Professional Negotiators
- The Role of Supervisors in Negotiations
- Employee Relations in the Context of the Labor Agreement

Two other NJSBA publications are important tools for effective negotiations:

Costing Out the Labor Agreement provides instructions on calculating the expense of salaries and benefits in your current contract and on estimating the cost of new union demands.

An Analysis of Teachers' Contracts in New Jersey 1979-80/1980-81 is your initial source of information for preparing for negotiations, with data from over 500 school districts on salaries and selected fringe benefits, and a discussion of trends in union demands across the state.

Negotiations in New Jersey schools are not getting any easier. These publications have proven useful to many school boards in the past. But no amount of instruction and advice can guarantee a successful conclusion to negotiations. The criteria for that achievement remains experience, stamina and fortitude by the board's negotiating team. Those qualities are critical to reaching a labor agreement that is fair to the board, fair to teachers, and fair to the community and the children of the district.

Good luck in negotiations.

Garry M. Whalen
Director of Labor Relations

The Scope of Negotiations

Although the New Jersey Supreme Court's decision in **Ridgefield Park**[1] narrowed the scope of bargaining by eliminating the permissive category of negotiations, it has not significantly reduced the number of scope of negotiation petitions filed annually with the Public Employment Relations Commission (PERC). School boards and teacher unions are still "feeling their way" when it comes to the dichotomy between mandatorily negotiable topics and illegal topics of bargaining.

In **Ridgefield Park**, the court defined required (mandatory) topics of bargaining as terms and conditions of employment that intimately and directly affect the work and welfare of public employees and on which negotiated agreements would not significantly interfere with the exercise of basic management prerogatives concerning government policy. Illegal topics include all major educational policy decisions and management prerogatives. The New Jersey Supreme Court further clarified the illegal category of negotiations in the **State of New Jersey**[2] case, where it found that public employers cannot negotiate over topics which are specifically set by other statutes or administrative regulations if such negotiations contravene either the statute or the regulation.

In another landmark case, **Woodstown-Pilesgrove**[3], the New Jersey Supreme Court ruled that a school board need not negotiate over the impact of non-negotiable educational policy decisions. The Court stated that a balancing test had to be struck between mandatorily negotiable topics and illegal topics. Where the dominant issue is an educational goal, there is no obligation to negotiate either over the issue or its impact, the Court said. Other issues that do not relate to educational goals, but instead are tied to compensation or workload, are issues subject to the negotiations obligation.

Although matters of educational policy and management prerogatives cannot be negotiated, a method for the resolution of complaints arising out of the application of management prerogatives to individual employees is a mandatorily negotiable term and condition of employment. In **Bernards Township**[4], the New Jersey Supreme Court determined that the withholding of a teacher's salary increment was a non-negotiable management prerogative that could not be submitted to binding arbitration. The Court went on to say, however, that the matter (withholding of a salary increment) could be submitted to **advisory arbitration**, if the parties so agreed. The Court reasoned that since a non-binding mechanism for resolving a dispute over the application of a management prerogative intimately and directly affected a teacher's work and welfare, and since agreeing to this type of mechanism would not significantly interfere with educational decision-making, advisory arbitration on the application of management rights to individual employees was a term and condition of employment in and of itself. If the parties did agree to this non-binding mechanism, and the dispute was not resolved, the Commissioner of Education would be available to the employee for a final determination.

The following items have been held to be required subjects of bargaining by PERC or the courts under Chapter 123 (remember, you must negotiate concerning these if demanded by the union; you do not have to concede unless you desire to do so):[5]

Advisory arbitration for the application of management prerogatives to individual employees
After school teacher-only workshops
Agency shop
Committees on non-negotiable topics that have advisory authority
Compensation
Disciplinary procedures for employees
Duty free lunch
Evaluation procedures that do not contravene statute or administrative code
Fair dismissal procedures
Fringe benefits, including benefits for riffed teachers if incorporated into the contract
Grievance procedures
Holidays
Holdback of salary
Hours
Insurance, including disability income
Job security (for employees not covered by tenure)
Length of the collective bargaining agreement
Merit pay
Payment for unused accumulated sick leave
Past practice
Personal leave
Personnel file, access to
Physical and mental exam, beyond statutory authority
Physical facilities and working conditions, smoking in teachers' lounge

1 **Ridgefield Park Education Association v. Ridgefield Park Board of Education,** 78 **NJ** 144.

2 **State of New Jersey v. Local 195, IFPTE and Local 518, SEIU,** 78 **NJ** 54

3 **Woodstown-Pilesgrove Regional School District v. Woodstown-Pilesgrove Regional Education Association,** 81 **NJ** 582.

4 **Bernards Township Board of Education v. Bernards Township Education Association,** 78 **NJ** 311.

5 If a panel of the Appellate Division took a position opposite PERC the court position is the one listed here.

Posting procedures
Preparation periods
Procedures for selection and promotion of department chairpersons, other positions
Representation for teachers at student disciplinary hearings, evaluation conferences, other meetings
Sabbatical leaves
Safety issues
Salary guide, initial placement, credit for experience
Subcontracting
Teacher-pupil contact time
Teaching periods, number of
Transfer and assignment procedures
Union business, time off for, use of prep period
Tuition reimbursement
Vacations
Workload
Work day, length of
Work year, length of[6]
Zipper clause

The following items have been determined to be non-mandatory (formerly permissive, now illegal) topics of bargaining under **Ridgefield Park:**

Absenteeism and tardiness policies; however discipline aspects not part of the evaluation process are negotiable
Academic calendar
Affirmative action plans
Application of evaluation criteria
Assignment
Audio-visual equipment, use of
Budget formulation
Class size
Contact time for students
Curriculum
Decision to assign bus, cafeteria, corridor and playground supervision
Decision to reschedule snow days in teacher vacation period
Decision to go to split session
Evaluation, advance notice of observation and who evaluates
Extra-curricular activities, assignment of
Facilities relating to the education process
Impact[7] of non-negotiable decisions
Lesson plans, format of and scheduling of submission
Productivity studies
Qualifications for employment
Qualifications for increment
Qualifications for promotion
Staffing, number of employees
Student safety
Student testing
Sunshine bargaining
Supervision, of employees by department chairperson
Transfer, decisions and criteria
Use of teacher aides

The following items have been held to be illegal topics of bargaining, because they contravene specific statutes or regulations:

Composition of the bargaining team
Decision to RIF
Early retirement incentives
Evaluation criteria
Extended sick leave
Impact of RIF on remaining teachers, and on riffed teachers
Maintenance of membership
Non-renewals
Parity
Pensions
Procedures for RIF
Religious leave (paid), if not charged to general personal leave or vacation
Seniority provisions inconsistent with 18A
Student grievance procedures
Withholding of increments

6 This is generally mandatory for public employees, however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.

7 Impact was declared illegal under **Woodstown-Pilesgrove.**

Agency Shop Negotiations

Introduction

A new union demand will probably appear on the bargaining table for the first time this year. If the board agrees to this demand, then all non-union members would be required to pay a "representation fee" to the majority bargaining agent (union). The law that sanctions negotiations for an agency shop arrangement took effect on July 1, 1980. The purpose of this analysis is to describe the major parts of the statute and to suggest various approaches that school boards should consider before agreeing to an agency shop demand. (See p. for the NJSBA analysis of the NJEA sample agreement language on this subject.)

Analyzing the Statute

A. Duty to Bargain

The law makes the agency shop a mandatory subject of negotiations. It does not require that all public sector contracts contain an agency shop clause. It simply allows the parties to negotiate and, **if they agree**, to include a provision for representation fee payments in their contract.

The timing of negotiations on this matter will depend on the current state of negotiations for a successor agreement. Those districts that will begin to bargain this fall for a successor agreement to take effect for the 1981-82 school year will likely negotiate regarding an agency shop proposal as part of overall negotiations. Those districts whose current contracts do not expire until June, 1982 may voluntarily choose to negotiate an agency shop proposal, but there appears to be no obligation for these boards to **reopen** negotiations regarding agency shop.

School boards currently completing negotiations for 1980-81 may not have to permit the addition of ar agency shop demand at this point in negotiations, if their initial ground rules called for no new demands to be added to negotiations after comprehensive proposals had been exchanged. However, a board may find it advantageous to agree to negotiations on agency shop if it is linked to a significant union concession.

Some districts have negotiated reopener clauses of one type or another. Those districts that have a salary reopener clause in their contracts would appear to have no contractual requirement to negotiate an agency shop demand. However, this last situation should not preclude negotiating this demand as a *quid pro quo* for a lower salary increase. Some districts may have a reopener on language items only, and may be required to negotiate an agency shop demand upon the request of the majority representative.

B. Computing the Fee

The method of computing the representation fee is set forth in the law as follows:

> *The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.*

Simply stated, a non-union member will have to pay no more than 85% of current union dues, fees, and assessments to the majority bargaining agent. The union's costs for providing benefits to union members only, such as a group travel, group insurance, or income protection/disability plan, cannot be applied toward calculating the representation fee. It appears the actual amount of the fee is not negotiated; instead the union internally establishes the amount of the fee, based upon the formula cited in the statute. Some school boards, however, have taken the position that the percentage of union dues, fees, and assessments, as long as it does not exceed 85%, is negotiable. This matter will likely be subject to litigation in the near future.

C. Payroll Deductions

The agency shop law makes payroll deductions of the agency shop fee automatic. No employee authorization appears needed. The fee is similar, in this way, to a tax.

D. Demand and Return System

Before the public employer begins to deduct a representation fee from the paychecks of non-union members, the union must first establish and continue to maintain a "demand and return system," through which non-members can challenge the amount of the representation fee (see below). If this system is not established or maintained during the life of the negotiated agreement, including the period between successive agreements, then the public employer is not permitted to make representation fee deductions. It appears that the demand and return system will be similar to a grievance procedure for the processing of non-union member complaints concerning the amount of the representation fee, except that the complaints are filed against the union rather than against the employer.

E. Appealing the Fee

The law provides that any employee who pays a representation fee may demand the return of a *pro rata* portion of that fee, where the majority representative expends funds that are either:

> *...in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative.*

The following language, however, qualifies the two conditions set forth above:

> *The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer.*

The costs of lobbying pursuant to collective bargaining objectives (e.g. permissive topics, binding grievance arbitration, the right to strike) and other types of activities (e.g. unemployment compensation, tenure reform) for the purpose of improved wages, hours, and working conditions are apparently applicable toward the 85% "representation fee."

We will be hearing a good deal of discussion this year concerning what constitutes "partisan, political or ideological" activity, when is an activity "only incidentally related" to terms and conditions of employment, and what qualifies as "advantages" in conditions of employment. How these issues are resolved will determine in large part whether representation fees can be used to defray specific lobbying expenses.

Additionally, should an activity or cause result in benefits to union members only, then its cost would automatically be excluded from representation fee payments. Thus, if the total cost of excludable union activities exceeds 15% of regular union dues, fees, and assessments, then the non-union employee is entitled to a *pro rata* reduction of the amount in excess of the 15%.

To further complicate the situation, most professional school employees have their annual dues paid to four separate entities: the national organization, the state affiliate, the county association, and the local affiliate. The manner in which each affiliate body spends its money may have to be scrutinized when an appeal by a non-union member for a *pro rata* fee reduction occurs.

The law permits only an employee who pays the representation fee to challenge the amount of the fee that the union establishes. The law further describes how an employee may challenge the amount of the fee. Upon the request of a non-union employee, the majority representative bears the burden of proving that the fee meets the criteria established by the law. Should the employee remain unpersuaded, he may process an appeal to a three-member Tripartite Board appointed by the Governor with the advice and consent of the Senate. The Board is composed of a public employer representative, a public employee organization representative, and a third member representing the public interest who serves as chairman.

The statute also states that PERC may promulgate rules or regulations "to effectuate the purposes of the act," and the Commission currently is developing them. It is obvious, however, that it will take some time before the Tripartite Board begins its work, and still longer before it issues its first decision.

F. Payment of Fee for New or Returning Employees

The statute describes the manner of fee payment for new or returning employees. All newly hired employees where an agency shop clause exists who choose not to join the union will be required to pay a "representation fee," but the fee can be assessed **no earlier than thirty days** after their employment in the district. Where the union has an annualized dues figure, it will apparently have to prorate its dues to accommodate this 30 day grace period.

Employees who once were members of a bargaining unit that now has negotiated an agency shop arrangement must pay a representation fee if they return to that unit after being in another bargaining unit or after being in an excluded position (supervisory or confidential). Assuming that they choose not to join the union, their fee can be assessed **no earlier than ten days** after their entry into the bargaining unit. In addition, riffed, tenured teachers being recalled from a re-employment list would also be assessed the representation fee in conformance with the ten-day timelines cited above.

These are minimum periods that must elapse before any representation fee can be paid to the majority agent. Consistent with the Supreme Court's holding in **State Supervisory Employees**, a school district and local union that agree to an agency shop arrangement can negotiate to establish effective dates for deductions that are greater than the ten and thirty day minimum limits established by the law. A school district could insist upon a clause that would delay representation fee payments well beyond the ten day minimum period for returning unit members and well beyond the minimum thirty day grace period for newly hired employees. The timing of payment for returning or new employees may be a valuable bargaining chip for school boards in those districts that are expecting to increase staff or those that have a large number of teachers returning from layoff.

G. Non-discrimination

The law states that a majority bargaining agent is barred from collecting a "representation fee", unless membership in the majority representative is available to all employees in the unit on an equal basis. It would appear, then, that any union that refuses membership to any eligible non-

union member forfeits its right to collect a representation fee.

The statute further prohibits a public employer or an employee organization from discriminating between non-union members who pay a representation fee and union members. This language presumably would ensure that a public employer could not give preferential treatment to one group of employees over the other. The language would also prohibit a union from refusing to process grievances that non-union members may file, a prohibition that already existed prior to the enactment of the agency shop statute.

H. Exemption From Fee Payment

Suppose that, in an effort to make its agency shop demand more acceptable, a union requests that only certain non-union employees, e.g. newly hired employees, be required to pay the "representation fee." Current non-union members thus would be exempt from payment under a "grandfather clause." Is such an arrangement that differentiates between two types of non-union employees for purposes of fee payment legal?

The statute speaks to this matter in the following way:

> *...the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by* **all** nonmember employees in the unit to the majority representative of a representative fee in lieu of dues for services rendered by the majority representative. [Emphasis added.]

The word "all" may imply a legislative intent to ensure that all non-union employees in the appropriate unit, and not just a certain group of them, be required to pay the representation fee. Otherwise, it would appear that a local contract could undermine the purpose of the law, which was to require non-union members to help defray the costs of specified union activities rendered on behalf of all members of the bargaining unit.

Negotiating an Agency Shop Demand

The importance that each local union places on acceptance of this proposal will vary according to the potential for financial gain versus the price that the union will have to pay for gaining board acceptance.

In some districts, the local union is sufficiently strong, because of the high percentage of union members among all of the bargaining unit members, to be unconcerned about negotiating an agency shop clause. For example, if there are 100 bargaining unit members and all but two of them are union members, the priority that the union places on winning the agency shop may be low. Such a proposal may be relegated to one of the many union "throw away" items.

In other districts, obtaining an agency shop agreement may be a top priority for the union. This is particularly true in districts where the local union has a proportionately small number of dues-paying members. Certainly, where there is an active rival union in the district that has a substantial number of members, the majority union will push strongly for agreement on an agency shop clause.

An agency shop agreement may well increase union membership in some districts. Given a choice of paying an 85% representation fee or 100% union dues, many employees will choose union membership for union sponsored vacation, life insurance, and income protection/disability plans. Other employees will prefer union membership because it gives them voting rights and a degree of authority that they previously did not have or did not want to have.

Some school boards may oppose agency shop on philosophical grounds. They may strongly believe that employees should have the right not to support an organization if they so desire, and that school boards should not enter into agreements that subsidize the activities of their negotiations adversaries. This is a justifiable position and a legitimate reason to refuse to agree to an agency shop proposal.

Boards that are inclined to agree to agency shop if the "price is right" should consider the following issues:

a) Make certain that board agreement to agency shop is conditioned upon a union concession of equivalent value, e.g. a cap on a financial item such as tuition reimbursement, or stricter control on paid leave usage. The key is that the union's trade-off should be of equal value to the **union's gain** from an agency shop clause. The cost to the board of deducting the fees, for example, is **not** the measure for calculating an appropriate union trade-off.

b) Make certain that the union establishes a demand and return system before deducting representation fees.

c) Make certain that the union agrees to make all non-union members aware of their legal rights of appeal and of the procedures available for such an appeal. If the union refuses to do so, the board should provide this information.

d) Make certain to negotiate indemnification language to protect a school board from most types of financial liability resulting from the inclusion of the clause in the agreement. Sample union security indeminification language is listed below.

> *The union shall indemnify and hold the employer harmless against any and all claims, demands, suits and other forms of liability, including liability for reasonable counsel fees and other legal costs and expenses, that may arise out of, or by reason of any action taken or not taken by the employer in conformance with this provision.*

e) Make certain that the effective date of the agency shop clause is clear. If still negotiating for an 1980-81 contract, a board may agree to agency shop payments prospectively from the time of settlement, or retroactively to the effective date of the new contract.

Please realize, however, that retroactive application of an agency shop clause means that non-members could be assessed **double payments** until the entire annual fee is paid.

In negotiations regarding a 1981-82 agreement, the effective date of the agency shop clause should be the effective date of the new agreement, or the date of settlement, whichever is later. **Under no circumstances should a representation fee be deducted for any time prior to July 1, 1980.**

There may be other issues that will arise in connection with the new agency shop law that have not been discussed in this article. In the absence of any clear administrative agency or judicial guidance, school boards are strongly advised to consult their board attorney or professional negotiator, or the NJSBA Labor Relations Department, before agreeing to agency shop.

When To Start Bargaining

School boards and teacher unions in New Jersey generally meet too early and too often for negotiations sessions. There is no reason to begin negotiations on October 15 for a new contract that will not take effect until the following July 1. Most private sector contracts are negotiated in less than 90 days. In New York, teacher bargaining generally commences in February, and they appear to have as many settlements before July 1 as we do.

The pattern for meeting in October was established in part because of PERC's regulations on the commencement date for negotiations. PERC's regulations call for the parties to begin negotiations no later than 120 days prior to the public employer's "budget submission date". For school districts this has been interpreted by PERC to be the budget election date. In prior years the school budget election date was in early February and districts were thus obliged to meet in mid-October.

This year the school budget election date is April 7, the first Tuesday of that month. Consequently, the commencement date for negotiations is December 8, 1980. Districts should consider delaying an initial meeting with their unions until or about this date, and limiting this meeting to a discussion of negotiations, ground rules and a schedule for future meetings. Under this arrangement it's possible that no substantive negotiations will occur until January. This should not adversely affect the outcome of negotiations, nor our ability to settle before the school year ends. In many districts, however, it will mean fewer meetings and less wasted time, an important consideration for board members and administrators. If there is any effect on the outcome of bargaining, it would probably be that fewer concessions will be made by the board when negotiations are handled in fewer meetings over a shorter period of time.

If your current contract states that the parties must commence negotiations no later than October 15 (or any date earlier than December 8) in the year prior to the year in which the contract expires, then you are bound to meet by that date. Because of the delayed budget submission date this year, however, it may be futile to meet for negotiations before you've done substantial work on your 1981-82 budget. Explaining this to the union may lead them to agree to postpone future meetings until later in the year. If they do not agree, at least schedule your meetings to permit the board adequate time to prepare the budget thoughtfully.

Districts that have such a firm date to begin negotiations should demand, in this year's negotiations, that this be deleted and that substitute language such as the following be adopted:

> *The parties agree to enter collective negotiations over a successor agreement according to the timetable established by the Public Employment Relations Commission.*

This language is actually not necessary, given that it merely restates your legal obligations, but it is an appropriate substitute for present language binding you to a specific date.

The experience with fluctuating commencement dates underscores the fact that boards should generally not agree to paraphrases of law in their contracts. This is true for the following reasons:

1. A paraphrase of law frequently misstates the exact intent of the law. Such a mistake can only create an **increase** in employee benefits, since you are never permitted to negotiate a benefit level that is below the statutory minimum.

2. A contract should only contain statements about the benefits and obligations which are created through negotiations. There is no reason to restate one's legal obligations in the contract, since one is bound by law to meet those obligations. To restate the law, therefore, is at best unnecessary and at worst can create additional responsibilities. It may also subject grievances over alleged violations of the law to arbitration, if your arbitration clause covers "all disputes arising over the interpretation or application of the written agreement."

3. Where the law changes, as with the commencement date for negotiations, the employer will be stuck with the **greater** obligation of the law or the contract. If, for example, your contract specified that you would begin negotiations on October 15, and an action by PERC, the Legislature, or the State Board of Education created a new commencement date of October 1, you would be bound to the October 1 date. If, as in our present situation, the commencement date is pushed to later in the year, you remain bound to the earlier date of October 15. It is a no-win situation for the employer.

An Analysis of Selected Contract Clauses

One of the critical aspects of the bargaining process is the drafting of contract language that is clear, unambiguous and achieves the school board's goals for a particular issue. Equally important are the abilities to analyze union proposals on various language items and the drafting of good counterproposals.

Collective bargaining agreements in New Jersey public education can contain from a half dozen to fifty contract clauses, depending upon the size of the district, the bargaining history, and the imagination and persistence of the parties. Certain clauses are found in all contracts: the recognition clause, the grievance procedure, the salary schedule, fringe benefit provisions and a duration of agreement clause. These clauses identify the four corners of the contract: who's covered by the agreement, for what period of time, how to enforce the contract, and the salaries and benefits covered employees receive.

Most other contracts go beyond these basics, however, and address other issues, such as: teacher evaluation, workload, transfers, payment for unused accumulated sick leave upon retirement, etc.

The following analysis provides examples of three typical contract clauses. The figures and dates used regarding timelines, reimbursement amounts and all other quantitative provisions are included **as illustrations only**. The NJSBA is not recommending that you adopt these figures in your contract, but only that **some specification** regarding such figures appear in your contract if you choose to agree to such clauses.

RECOGNITION CLAUSE

The recognition clause is critical to the negotiated agreement; without one, the contract really has no purpose. The composition of the bargaining unit can vary tremendously from district to district. To analyze a recognition clause, you should be familiar with the typical components of such a clause.

1. **Which union is being recognized.** Is it an independent? An NJEA local or an AFT?
2. **The purposes of the recognition.** In almost all contracts the purpose will be for negotiations over terms and conditions of employment and grievance handling.
3. **What groups of employees are in the unit?** Certificated personnel, secretarial, custodial or a wall-to-wall unit?
4. **Limits on these groups.** Some contracts specify that only regularly employed, permanent, or full-time employees are in the unit.
5. **Specific inclusions.** General job titles are listed to clearly indicate what positions are in the unit.
6. **Specific exclusions.** Are there other full-time regularly employed, certificated positions that are not in the unit? Department chairpersons, principals, the Superintendent, confidential employees, or other groups of positions should be listed.
7. **Application of Entire Contract.** If part-timers or per diems **are** in the unit or if the unit is a mixed one (professional and support staff) do certain parts of the contract not apply to them?

Not all recognition clauses contain all of these components. An analysis of the following recognition clause demonstrates this.

This clause is from an actual New Jersey public education contract:

(1) Which union	The Board hereby recognizes the (1) *Smith Education Association* as the exclusive and sole representative for (2) *collective negotiations concerning grievances and terms and conditions of employment for* (3) *all certificated personnel employed by the board under contract or on leave,* (5) *restricted to classroom teachers, special teachers, nurses, social workers, learning disability consultants and psychologists.*
(2) What purposes	
(3) What groups of employees	
(5) Specific inclusions	

Not all of the components discussed earlier are present in the above clause. The following clause does incorporate the necessary ingredients for a good recognition clause.

(1) Which union	*The _____ Board of Education recognizes the (1) _____ Education Association as the majority representative for (2) negotiations over terms and conditions of employment and grievances for (3) (4) regularly employed professionally certificated personnel who work more than 20 hours per week, (5) specifically including: classroom teachers, specialists, and special services personnel, but (6) specifically excluding supervisors, principals, the Superintendent and assistant superintendents, non-professional employees, per diem employees and professional employees working less than 20 hours per week. (7) Articles 7, 9, 12 and 14 do not apply to less than full-time employees.*
(2) What purpose	
(3) Which groups of employees	
(4) Limits	
(5) Specific inclusions	
(6) Specific exclusions	
(7) Application of entire contract	

This clause satisfies the components set forth above, and lets the contract reader know exactly which positions are covered by the contract.

PAYMENT FOR UNUSED ACCUMULATED SICK LEAVE UPON RETIREMENT

A fringe benefit that has been growing in popularity in the past few rounds of negotiations, contract clauses for payment for unused accumulated sick leave are now present in approximately 44% of 1980-81 teacher contracts in

New Jersey.[1] There is a wide variance, however, in the payout and eligibility requirements for this benefit in these districts. Proponents of this kind of clause argue that reimbursing teachers for unused sick leave at retirement will help reduce teacher absenteeism; however, until evidence is uncovered that will substantiate this claim, it is best to view this clause as just another teacher fringe benefit.

The components of a payment for unused accumulated sick leave clause are as follows:

1. **Date of eligibility.** At the employee's retirement or upon resignation? Almost no teacher contracts provide payment for unused sick leave at resignation where the employee is not retiring.
2. **Effective date of the program.** Are the days that teachers have accumulated **prior to the new clause** eligible for reimbursement? Or is there a grandfather clause excluding such days?
3. **Minimum length of service.** How many years must the employee have worked in your district?
4. **Minimum Age.** Must an employee be at the minimum retirement age for TPAF or older to qualify for the program?
5. **Advance Notice of Retirement.** In order to budget properly, many boards require at least one year's notice of the employee's intention to retire in order to qualify for the program.
6. **Maximum Number of Days.** How many days that are accumulated will be reimbursed? Should you have a minimum per year accumulation, so that only those employees who had generally good attendance will be eligible?
7. **Amount Per Day.** What dollar amount per unused sick day will be reimbursed? Most clauses provide a nominal payment. Some link it to the substitute teacher's daily rate, or a percentage of the retiring teacher's daily rate. These should be avoided because they will increase over time without renegotiation and the board will receive no credit or bargaining concessions for such increases.
8. **Maximum Dollar Amount.** Is there a maximum amount a teacher will receive?
9. **Other Conditions.**

An analysis of the following contract clause shows how some contracts address these components. Note that there is no minimum length of service requirement for retiring employees as there is for resigning employees, and that the first year of the program has a reduced payment amount.

Article 9 — Payment for Unused Sick Leave

(1) Date of Eligibility	*Effective July 1, 1978, upon retirement,* teachers will receive payment for sick days earned in the Johnson School District.
(1) Date of Eligibility *(3) Minimum length of service*	*(1) Effective July 1, 1978, upon leaving the district, (3) teachers who have completed 15 years of service in Johnson,* will receive payment for sick days accumulated in Johnson.
(6) Maximum number of days *(7) Amount per day*	Effective July 1, 1978, payment for unused accumulated sick leave will be for *(6) 50% of the eligible days (7) at the rate of $15 per day.*
(6) Maximum number of days *(7) Amount per day*	Effective July 1, 1979, payment for unused accumulated sick leave will be for *(6) 100% of eligible days (7) at the rate of $15 per day.*

For the Board to adequately protect its rights, and properly plan for the future, all of the components described earlier should be in the contract. An example would be:

1. A teacher who has taught in the _____ School District for at least 20 years and who retires under the provisions of the TPAF shall be eligible for payment for unused accumulated sick leave.

This clause places a service requirement of 20 years **within the district** for eligibility, and also requires that a teacher be retiring from the district under the TPAF rather than a non-retirement resignation.

2. To be eligible for the payment, a teacher must notify the board of the intention to retire at least eighteen full months prior to the effective date of the retirement. The payment shall be made no later than 6 months from the effective date of the retirement.

This clause is critical for budgeting, and gives the Board time to arrange its financial obligations so that its accounts are kept in order.

3. Sick days eligible for reimbursement shall have been accumulated no earlier than September 1, 1978, up to a maximum of 100 days when the teacher retires.

This is a modified grandfather clause, which disallows reimbursement for sick leave days accumulated prior to a certain date, and therefore will save the board money. In addition, a cap is placed on the maximum number of days which can be paid for.

4. For each eligible unused sick leave day, the teacher who qualifies for payment under the terms of this article shall receive $10.

This clause, in essence, puts a dollar lid on what it can cost a board for a retiring teacher. If a teacher has accumulated 100 days by the time he retires in 1989, then the maximum he could receive, under this clause, would be $1,000.

1 **An Analysis of Teachers Contracts in New Jersey, 1979-80/1980-81,** NJSBA, 1980

TRANSFER CLAUSES

Since the Supreme Court's decision in **Ridgefield Park**, which invalidated the permissive category of negotiations and held that transfer decisions are not negotiable, much confusion has arisen regarding the negotiability of transfer clauses. PERC has held, in various cases, that transfer procedures are mandatorily negotiable, while the criteria relating to transfer decisions and the decision itself are educational policy matters that cannot be negotiated. Any contract provisions on transfers which are present in your negotiated agreement should only address the procedural aspects of transfers. These components are:

1. **Posting of Vacancies.** So that teachers who would like a change in grade or building know what openings are available.
2. **Application Procedures.** Timelines, requirements for voluntary transfer requests.
3. **Notice of Transfer Decisions and Assignment.** Dates by which the teacher knows of his class for the following year.
4. **Written Reasons for Involuntary Transfer.** Whereby the teacher is told why he was transferred.
5. **Conference following an Involuntary Transfer.** This gives the teacher the right to meet with the Superintendent or Principal to discuss the transfer decision.
6. **Other.**

The following actual New Jersey contract clause relates to teacher transfer. Please note that the language that is in brackets is illegal under the Supreme Court's decision in **Ridgefield Park.**

I. **Voluntary Transfer**

(1) Posting of vacancies

(1) Within three school days after the Board has determined the existence of a teaching vacancy during the school year the superintendent shall distribute a list of such vacancies, a copy of which shall be sent to the Association and posted in each school building by the building principal.

(2) Application procedures

A teacher who desires a change in grade assignment, a change in subject assignment, or a transfer to another school building, shall adhere to the following procedures: *(2)*

a) Within five school days from date of posting the teacher shall file a written statement of his/her desire to transfer or be reassigned with the superintendent.

b) If there is no immediate vacancy, the teacher shall file a request for transfer or reassignment at any time a vacancy exists for the following school year.

c) The teacher shall include in the request the specific grade level, subject area, or school building to which s/he is seeking transfer or reassignment.

d) The application shall state in order of preference, the grade levels, subject areas, or buildings of the existing vacancies to which s/he might want to be transferred.

The Superintendent shall render a decision no later than 60 days after the request was made.

Illegal

[In the determination of granting requests for voluntary transfers and reassignments, the following criteria shall be used:

a) certification in the area

b) experience in the district

c) experience and ability for the position to be filled.

d) the overall impact of the transfer on the instructional program.

e) when all other factors are equal, longevity in the district shall be the deciding factor.

f) prior to hiring teachers to fill vacancies, requests for transfers and reassignments by individuals already employed in the district shall be considered.]

II. **Involuntary Transfer**

(3) Written notice

(4) Reasons

When an involuntary transfer becomes necessary *(3) the teacher or teachers involved shall be notified in writing. (4) This notification shall include all reasons for such transfer, including teachers and buildings involved.*

Illegal

[Volunteers who satisfy the criteria established in Article XV shall be considered for all vacancies or positions prior to making any involuntary transfers.]

Illegal

[In the determination of involuntary transfers and reassignments, the following criteria shall be considered:

a) Individual certification, qualifications and experiences.

b) The requirements of the position to be filled and the best interests of the school district.]

(5) Conference

(5) An involuntary transfer or reassignment shall be made after a meeting between the teacher and the principal involved. A representative of the Association designated by its President shall attend upon request of the teacher. At this meeting the teacher shall be notified of the reason or reasons for the transfer or reassignment.

(6) Other

If, as a result of this meeting, the teacher still objects to the transfer or reassignment, *(6) he shall appeal in writing to the superintendent* within three school days.

The Superintendent or his/her designated representative shall meet with the teacher as well as a representative of the Association designated by its President to discuss an appeal to an involuntary transfer or reassignment.

The following is an example of a transfer provision that should protect both the teacher and the board.

1. Whenever a vacancy occurs in the school district, notice shall be posted for at least 2 weeks on bulletin boards in all schools and sent to the Association. Such notice shall state the date by which applications are to be made.

This clause makes teachers who would like a transfer aware of vacancies that arise from resignations, non-renewals, retirement, etc. but avoids the unnecessary distribution of notices to each individual teacher. The two week time period could be lengthened or shortened to accommodate the administrator's or union's needs.

2. A teacher who would like a transfer should discuss the matter with his Principal and formally request such transfer in writing to the Superintendent within the designated application cut-off date.

Application procedures can be made more specific if necessary.

3. Notice of a voluntary transfer shall be made to the individual employee, posted for a duration of one week on bulletin boards in all schools, and sent to the Association, as soon as practicable after the decision is made.

This clause is included so that the staff is advised of changes in assignments and the outcome of the transfer applications, without unduly burdening the administration.

4. When a teacher is involuntarily transferred, he shall receive written notice as soon as the Board has taken formal action. If the employee requests within 10 days of the notice, he shall receive a statement of reasons for the transfer from the Superintendent within 30 days of the request. The employee may also request a conference with the Superintendent, within 10 days of the receipt of the reasons, in order to discuss the transfer further.

This article is intended to provide procedural safeguards for teachers who are involuntarily transferred. Notice, statement of reasons, and a conference are all procedural matters which are negotiable. A contract provision which prevents the employer from making a transfer until a meeting occurred would be illegal under a recent PERC decision.[2] An arbitrator could not rescind a transfer because of a procedural violation.

SUMMARY

This analysis was not intended to substitute for the drafting of your contract language on these issues. Indeed, actual contract language should reflect your district's individualized bargaining goals and should attempt to correct any language problems in your current contract. However, you should take the time to review your contract's provisions on these issues, and compare them to the components discussed in this article. Should you receive a proposal on payment for unused accumulated sick leave, for example, you will be able to "dissect" it to see what is missing.

Writing good contract language is not easy at the midnight hour or during mediation. That is why it is critical that you take the time to analyze your contract and draft possible changes in advance of at-the-table negotiations. It pays to be prepared!

2 **Monroe Township Board of Education and Monroe Township Education Association,** PERC No. 80-146. 6 **NJPER** 11143

Caps, Inflation and Negotiations

Bargaining for successor agreements for the upcoming school year may be the most difficult in the fourteen years of public sector negotiations. There are many variables that affect the conduct of negotiations, including the personalities at the table, the size and composition of the school district, the history of bargaining and contract administration in the district, internal union politics, the demands of the parties, and many more. Nothing, however, clearly influences the outcome of bargaining in most districts as two outside forces: caps and inflation.

The Impact of Caps on Negotiations

Unions will likely press very hard for major economic gains (salaries and fringe benefits) in response to an unusually high rate of inflation. School boards will respond in part by citing the budget cap law which restricts their ability to pay the substantial raises that unions are now seeking.

This type of negotiating environment is difficult, but it is manageable if the parties face up to today's harsh realities. There is every indication that the public would oppose efforts to repeal, totally, a law that has served to limit rises in local property taxes. Caps are, in many ways, politically popular. Although there are compelling reasons to modify the caps because of spiralling increases in fixed costs (insurance, utilities, heat, maintenance, repair, etc.) and in mandated state programs, and because of certain built-in inequities, the likelihood of a total repeal of the cap law is highly remote.

Employee salaries and fringe benefits constitute anywhere from 60% to 80% of the total school budget. Negotiations determine the cost of these benefits, and thus, the percentage of the total school budget that is absorbed by them. At least for the foreseeable future, employee salaries and fringe benefits will be negotiated within the general budgetary confines that each district's cap establishes. This is not necessarily bad. If there were no cap law, a school district would be under enormous pressure to accede to excessive salary demands. "Caps" is a legitimate defense to an aggressive union position, and should be employed as part of an overall strategy throughout all stages of bargaining, including mediation and factfinding. A district must impress upon the neutral the importance of its budgeting limitations. If a district ignores the reality of its cap as a limiting factor in negotiations, it will undercut its ability to meet its primary responsibility to provide students with a "Thorough and Efficient Education."

Simply stated, school districts have only a limited amout to bargain with. A 9% cap can be extremely restrictive in negotiations when all other expenditures are considered. Fixed expenses and mandated programs alone require certain expenditures to increase from year to year at a rate far greater than the allowable budgetary growth. In addition, textbooks, laboratory equipment, uniforms, etc. need to be bought. Meanwhile, employee organizations demand double-digit salary increases in addition to other cost-carrying proposals. Bargaining must attempt to reconcile these conflicting and competing priorities.

Remember, above all, that unions are self-serving organizations. Their principal task in negotiations is to secure the highest level of benefits for their members. Unions will never admit that they were indirectly responsible for a layoff of teachers or for a cutback in educational programs because their salary package far exceeded the cap. Their position is very clear: school boards are public employers. **In agreeing to a salary package, it is the school board that assumes the responsibility for any adverse impact resulting from it.** Given this situation, school boards must not forget that they are responsible, not only to their employees for fair compensation, but also to the citizens and to the students in the community. Unions need to be constantly reminded of this fact throughout negotiations.

The Impact of Inflation on Negotiations

Employers, employees, unions, citizens and government policy-makers often look to the Consumer Price Index (CPI) as the prime indicator of changes in the rate of inflation. The CPI does indicate changes in the rate of inflation, but it may surprise many to know that the CPI does not precisely signal corresponding changes in the Cost of Living (COL).

The CPI measures changes in the purchasing power of the dollars we spend. The index is in fact a **price index**, which describes changes in prices for a fixed group of items. It does not reflect the changes in buying patterns that a consumer probably will make to adjust to higher prices. For example, if beef prices rise sharply, consumers tend to substitute poultry or pork for the more expensive meats. If the price of new cars increases, consumers may choose to postpone buying a car or may decide to repair their current cars. Thus, during times of inflation, consumers react to sharply higher prices in some areas by simply changing their buying habits.

This point is crucial because it demonstrates the difference between CPI and Cost-of-Living. The CPI assumes the purchase of the same market basket of goods from month to month and from year to year. It may not truly reflect the actual change in the cost of living of school employees because it is not known how school employees are spending their money. The CPI also does not include income and social security taxes, but does include sales taxes. The former taxes are not linked to the prices of specific goods and services; the latter taxes obviously are. An accurate cost-of-living index would include all these taxes.

There are two basic CPI's: one is referred to as the **Consumer Price Index for Urban Wage Earners and Clerical Workers**, which was revised in January, 1978 and which is known as the revised CPI-W; the second index is the newest and is known as the **Consumer Price Index for all Urban Consumers** (CPI-U). The Bureau of Labor Statistics (BLS) reports monthly changes in the revised CPI-W and in the CPI-U.[1]

The CPI-U is considered the more accurate indicator of price fluctuations affecting school boards and their employees. First, the CPI-U reflects the buying habits of about 80% of the non-institutional civilian population, whereas the revised CPI-W reflects the buying habits of approximately one-half of the population. Second, the revised CPI-W includes only wage earners and clerical employees. The CPI-U, however, includes those two groups and also includes professional, managerial and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force. Neither index includes persons in the military services or in institutions, or persons living outside urban areas.

The BLS also produces five monthly regional indexes for the following areas: Chicago, Detroit, Los Angeles, **New York, N.Y. - Northeastern, N.J.** and **Philadelphia, PA -N.J.** In addition, the BLS publishes indexes every other month for twenty-three other regional areas. It is noteworthy that New Jersey, due to its geographic position, has access to monthly CPI information. In addition, the BLS publishes other statistical yardsticks that include a breakdown of the CPI by expenditure category, and annual costs of lower, intermediate and higher budgets for a four person family.

Although this information may appear technical and abstract, it is extremely important that school boards understand these various statistical measurements of prices and income changes. Unions come to the table armed with data that board negotiators should verify for accuracy and for uniformity. For example, the union negotiator may claim that the current rate of inflation is 14%. The appropriate response to this claim might be an inquiry as to the source for this figure. Is the union quoting the national CPI-U, revised CPI-W, or one of the two regional indexes, or is he extrapolating an annual rate of inflation according to a single monthly change in the CPI?

When discussing the rate of inflation, school boards should press the union for more information. It is important not only to determine which index the union is claiming to use, but also to ascertain the manner in which the union is computing the current rate of inflation. In some cases, the union will select the highest monthly percentage increase in a particular, though not necessarily appropriate, CPI and multiply by 12 to get an annualized rate. This is, of course, plainly misleading. A month rise in the CPI tells you nothing of value; it should never be used to figure past or future annual inflation rates.

For example, the percentage change in the New York City-Northeastern, N.J. CPI-U from May 1980 to June 1980 was 1.15%. The media may take that figure, multiply by 12, and report that the current inflation rate is 13.8%. The percentage change in the CPI for that single month, however, may not represent such an ominous trend. As a matter of fact, the previous one month percentage change in the CPI-U for that region was only 0.6%. Using that figure, the annualized rate would be just 7.2%. The media, unfortunately, usually uses this approach.

More sophisticated union negotiators will likely compute the percentage change in the CPI in other, more valid ways. Their computations, however, must be carefully reviewed, both for accuracy and for relevancy. One thing is certain: the union will interpret the rate of inflation and, if pressed, the manner of its computation in the way which is to its greatest advantage.

School districts should be aware of the two basic computational methods used to determine long range changes in the CPI.

Method 1:

This method uses the twelve month averages of the CPI over two years to compute the percentage change from one year to the next.

$$\frac{\text{Avg. CPI for '79-80 (Sept.-Aug.) - Avg. CPI for '78-79}}{\text{Avg. CPI '78-79}} \times 100 = ____\%$$

Method 2:

This method uses a selected month as the basis for computing the percentage for a one year period.

$$\frac{\text{August 1980 CPI - August 1979 CPI}}{\text{August 1979 CPI}} \times 100 = _____ \%$$

During periods of high inflation, Method 1 has a greater leveling effect on the percentage change in the CPI than during a period of declining inflation rates. Because Method 1 provides a figure that is representative of one year against the preceding year, it reflects changes over a full two-year period. Union negotiators are more inclined to use Method 2 during high inflationary periods for obvious reasons.

The Limitations of CPI Data

In today's economy, there is no denying that inflation is making major inroads into the purchasing power of school employees, and that the CPI is one of the best indicators, though certainly not a precise indicator, of changes in purchasing power. Given its value, the CPI also has its drawbacks:

1. It is not an exact measure of price change because it masks the fact that some prices have risen more than others.

2. It measures price changes only, and none of the other factors that affect living expenses, such as income and personal property taxes.

3. It includes certain prices that do not affect school employees. For example, one important factor in determining the CPI is the cost of medical care. Since almost all

1 Adapted from Educational Research Services, Inc., **The New and Revised Consumer Price Indexes**, (Arlington, Virginia: Educational Research Services, Inc., 1978) p. 8.

school boards pay the full cost of hospital/surgical/major medical insurance coverage, increases in these costs do not affect school employees the way the CPI implies.

4. It cannot be used to contrast accurately the actual living costs between cities or regions; instead it only measures the rate of change in each city or region. For example, a city with a very high "cost of living" may have a slower **increase** in such costs than another city, but remain a more expensive place to live.

5. It is slow to reflect changes to consumer buying habits. As prices rise, consumers may substitute different items which might not be included in the CPI market basket. Also, consumers buy new products as they are introduced and change their preferences for current market goods.

6. It does not reflect such non-cash consumption as home-grown food.

7. It is biased toward price movements in urban areas.

8. It contains data that is almost two months old by the date of the publication.[2]

COLA Clauses and Multi-Year Agreements

In light of the current rate of inflation, some unions may want to negotiate Cost-of-Living Adjustment (COLA) clauses. COLAs are contained in many private sector contracts, but are rarely found in public sector agreements. In the private sector, for example, 59% of all private sector employees covered under collective bargaining agreements (approximately 5.5 million) receive periodic wage increases, according to fluctuations in the CPI.[3] In New Jersey teacher contracts, some type of cost-of-living provision was found in only 10 of 511 districts surveyed for the 1979-80 school year. This represents less than 2% of the total surveyed.[4]

COLA clauses are varied in type and content, but essentially they are designed to protect the purchasing power of employees by linking mid-contract wage increases to changes in the CPI. Thus, if the CPI were to increase by 2% during a three month period, employees might receive a portion or all of that 2% rise reflected in their earnings. Some pension systems and the Social Security System also increase payments to recipients based upon changes in the CPI.

Public employers, including school districts, should be extremely reluctant about agreeing to COLA clauses, because it is impossible to project with any degree of certainty actual changes in the CPI during the contract period. School districts that agree to such a clause have no way of knowing how much new money they will have to pay out in salaries. In addition, continued high inflation could disrupt a district's operations because all available new money would be channelled into employee salaries. Finally, the union that negotiates a COLA clause will likely regard it as a permanent part of the agreement and will fight hard to guarantee its retention in all future agreements.

On the other hand, multi-year agreements can be, in certain circumstances, highly beneficial to both the district and the union. They provide the opportunity to put most negotiations problems aside for a welcome, extended period of time. The most common approach to multi-year contracts is to provide greater increases in compensation in the second and/or third year of the agreement than in the first. In some cases, the district anticipates increased revenues (higher cap and/or new state and federal aid). In other cases, boards might simply be postponing difficult budgetary decisions and, in fact, may be creating a fiscal dilemma for the future. Assurances by the union or a mediator that "you can always find the money in the second year, because the budget isn't written yet" would be laughable if this were not so firmly believed to be true by these groups. Higher salaries at the cost of teacher jobs and program cuts are an undesirable trade-off. At the least, boards should know with reasonable certainty what the effect will be of increases in salaries in the second and third year of a multi-year contract; otherwise they risk buying a "pig in a poke."

Unions may be very eager to agree to multi-year agreements, if the "money is right." Indeed, a slower rate of inflation in the future may turn a modest salary increase, in today's terms, into a pleasant little windfall.

Multi-year contracts always involve a calculated risk, but the risk may well be worth it if a district can adequately project, to the extent possible, its ability to budget for those increases without seriously impairing its other educational obligations. A period of labor peace that is conspicuous for its absence of annual negotiations can be a strong incentive for the parties to conclude multi-year agreements.

Summary

Caps, inflation, and multi-year agreements are matters of great importance to school districts entering negotiations this year. The effective school board negotiator must look at all these concepts simultaneously in order to properly understand them and to use them to the district's advantage at the bargaining table.

2 CPI figures are available by calling the State Department of Labor and Industry, Division of Planning and Research at (609) 292-7567.

3 Edward Wasilewski, "Scheduled Wage Increases and Escalator Provisions in 1980," **Monthly Labor Review** 103 (January 1980): 9.

4 **An Analysis of Teachers' Contracts in New Jersey, 1979-80/1980-81,** NJSBA, 1980.

Opening Schools During a Strike

New Jersey school districts have had relatively few teacher strikes over the past 10 years. In 1979-80, fourteen districts experienced teacher strikes, and four others suffered short term "sick outs" by some or all of their professional staff. This is less than one-half the number of teacher strikes that occurred in Pennsylvania or Illinois, and merely one-quarter of the strikes seen in Michigan last year. New Jersey's fourteen strikes were not significantly more than we've experienced in prior years.

But a district which experiences a strike is not concerned with state-to-state comparisons, nor with statewide trends over the years. For the period of time immediately preceding the strike and through the eventual settlement of the dispute, the district must concentrate all its resources and energy on reacting to the strike as effectively as possible.

Many policy decisions must be made during this period: Should court injunctions be sought? Should an improved salary offer be made? If so, when? One of the most important policy decisions a school board must make is whether it will keep schools open. There are arguments for and against this option.

There are four main reasons to keep schools open during a strike:

1. **Opening schools puts pressure on the union to end the strike.** In order to get the union to compromise on its demands during a strike, pressure must be brought to bear on the union. Labor relations practitioners generally agree that the most effective pressure is economic, rather than legal, moral or political. By keeping schools open during a strike, a school district does not have to make up the school days affected by the strike. It will qualify for state aid according to its original calendar which provided for at least 180 student days. Consequently, teachers who are striking will lose a day's pay for each day of the strike. This loss is not a punishment, but an application of the principle, "No work - no pay." It is identical to private sector experience where wages lost to strikes usually cannot be made up.

By keeping schools open and docking teachers for each day of the strike, the district increases the pressure on the union to settle. If schools are shut down, on the other hand, the lost student days will almost certainly be made up by the district by extending the end of the school year. When days are made up, your teaching staff will be paid their normal salary for those days. All that has occurred to the teachers in this situation is that the beginning of school is delayed and the last day of school is extended further into June (or Christmas and spring vacations are shortened). This creates almost no pressure on the teachers' union to settle negotiations swiftly. Rather, it provides a psychological boost to the union leadership and members because it is interpreted as complete victory for the union.

2. **Opening schools provides an important community service.** Most families using the public schools have either only one parent who works, or two working parents. These families depend upon the public schools to provide a safe and supervised environment for their children during the school day when there are no parents at home. Opening schools during a strike meets this important community need.

Failure to open schools, however, means that many parents are forced to choose between finding alternative and expensive childcare facilities, leaving the children unsupervised at home during the entire workday, or staying home from work, at a loss of pay or vacation time, to supervise their children. These parents often form the most vocal community faction pressuring the board to "settle at any price."

3. **An adequate educational program *can* be offered during a strike.** With good administrative planning and a full commitment by the board, many districts have found that a valid educational program can be provided during the difficult days of a teacher strike. Some districts, including very large districts, are able to attract and retain 80% or more of their normal student body during a strike, by emphasizing to students that attendance is expected and that teaching and learning are going on.

One cannot minimize the enormity of the administrative effort needed to provide an educational program during a strike. Nor do we argue that the educational program offered during a strike will always be as good as your normal program. It can be, however, a T&E program that addresses basic skills at all levels of your system, and it should be the best program possible given the "less than best" situation created by the teachers' strike. Success by the board and its administrative team in this endeavor provides a psychological boost to the board in its negotiations efforts, and tends to increase community support for the board during the strike period.

4. **A commitment to open schools in the event of a strike and evidence that the administration is prepared to do so effectively will deter some strikes, shorten others, and minimize repeat strikes.** Any union, when weighing the decision to strike, should consider the costs of a strike compared to the benefits to be gained. If the union knows that the employer can operate indefinitely during a strike, a rational union will be reluctant to order its membership to strike. (Some strikes are caused by personality conflicts, deep seated hostilities, or internal union politics, and these may be unavoidable, no matter what stand the employer takes regarding the union demands on the table *or* the threatened strike.)

Some threatened strikes have clearly been avoided when the union realized that the board was not intimidated by its

strike threat, but rather was prepared to take the strike rather than capitulate to unreasonable union demands.

Other strikes appear to have been shortened once the union realized that the board was prepared to take a long strike. Finally, there is some evidence, and common sense supports this conclusion, that a union which strikes with impunity in one year because it knows the days lost to the strike will be made up and hence no economic losses are incurred by the strikers, is prone to call a strike in that same district during the next negotiations. On the other hand, in a district where the union membership recently lost five days pay during a strike that resulted in only a marginal increase in the board's offer, the likelihood of a repeat strike next time around is slim.

It must be noted that in some situations the successful opening of schools may lead to a longer strike. This can occur for two reasons: the board is not under the intense pressure to capitulate that exists when schools are shut down by the strike, so it "hangs tough" with its pre-strike negotiations position; or the union may become more and more adamant about its high salary and benefit demands because it feels it must save face with its constituents who are losing money during the strike, and/or because it believes that the teachers' wages lost during the strike must be made up through an increased wage offer by the board. The latter is obviously circular reasoning: "we struck (illegally) to get a better offer from the board, we're losing money during the strike, so the board owes us the money we would have received if we hadn't struck!" Whether or not one is convinced by this reasoning, it is a predictable union reaction.

A board that is faced with a strike and that has to decide on keeping schools open or closed should consider some other important facts:

1. **The most important criteria for opening school is student safety.** No district should open its schools if it is not confident that its students will enjoy the same degree of supervision and freedom from unsafe conditions that normally exists in the district. In some districts, certain buildings or programs may have to be closed temporarily, or for the strike's duration, if opening them would create an unsafe condition.

2. **The union will attack the decision to open schools as irresponsible.** The striking union will probably accuse the board of "holding the students hostage" by opening schools, of providing merely a babysitting service, and of jeopardizing the safety of the student body by running schools that are poorly supervised, chaotic and dangerous. The board can refute these charges only by providing the best educational programs possible during a strike, by permitting neutral community representatives to meet with the board and administration to discuss the condition of the schools and, where appropriate, by inviting these people to tour the school buildings in order to allay their concerns and rebut the union's charges.

Summary

This has not been an attempt to describe *how* schools can be kept open. The "Bibliography" section of this publication lists books and manuals that provide that kind of information. Rather, we have discussed the reasons for opening schools during a strike and some of the arguments against this option.

Teacher strikes remain illegal in New Jersey. Unfortunately, they continue to occur. Boards faced with the possibility of a strike should carefully consider the arguments for keeping schools open during a strike and the consequences of failing to do so. Not all districts can successfully open their schools during a strike. In some situations, particularly when your professional negotiator can predict a very short strike and/or your calendar is greater than 180 student days so that no make-up days are needed, opening schools may be inappropriate. But it is an option that should be addressed in every strike situation.

Finally, the successful ability to operate schools during a strike does *not* mean that the board should never consider revising its last offer to the union as a way to end the strike. The fact that a district can "take a strike" indefinitely does not mean that the board should do so. No one wins a strike. The board's goal should be to settle negotiations as quickly as possible, on terms that protect the district's interests, so that the parties can bring the school system back to normalcy without delay.

Maternity, Pregnancy Disability, and Childcare Leaves: An Analysis With Recommendations

In an era where declining enrollment is a fact of life in most school districts in New Jersey, it seems ironic that one of the most litigated and confusing areas currently affecting us concerns maternity, pregnancy disability, and childcare leaves. Recent court, State Board, Commissioner and Division of Civil Rights decisions have attempted to clarify what is lawful and unlawful regarding the use of sick leave for pregnancy-related disabilities and the status of childcare leaves of absence. Unfortunately, the conclusions of these various agencies and judicial entities have not been consistent. As usual, it will take further litigation to clear up some of the questions which still remain on maternity, pregnancy disability, and childcare leaves.

The State of the Law

Two laws actually come into play where cases have arisen over maternity, pregnancy disability, and childcare leaves: the sick leave statute in our education law (**N.J.S.A.** 38A:30-1 **et seq.**) and the New Jersey Law Against Discrimination (**N.J.S.A.** 10:5-1 **et seq.**)

An interpretation of these laws indicates two principles:

1) A school board cannot single out pregnancy as a criteria when adopting any policy, whether it be a sick leave policy, contract renewal policy, or any other policy.

2) Sick leave must be granted to teachers who are disabled due to pregnancy on the same basis as it is granted for other types of disabilities.

The Pregnancy Disability Period

In a case involving the **Cinnaminson Board of Education**,[1] the Commissioner of Education held that disability resulting from pregnancy is an illness under the sick leave statute. Teachers who are pregnant must be allowed to utilize accumulated sick leave while they are disabled due to pregnancy.

In **Cinnaminson**, the Commissioner stated that normally such disability can be presumed to exist one month prior to the birth of the child, and one month subsequent to the birth. Therefore, a non-specific doctor's certificate (indicating the anticipated delivery date) should satisfy the Board's need for medical certification of disability during this two-month period. If, however, a teacher requests a disability leave outside of these parameters, additional certification can be required to verify that the teacher either: is not able to work in earlier months of the pregnancy; is capable of working through the ninth month; wants to return sooner than the one month presumed post-delivery disability period; or is disabled more than one month post-delivery.

Non-discriminatory Policies Needed

A school board may not negotiate or establish policies which discriminate against or accord disparate treatment to teachers who are pregnant. In **Castellano v. Linden Board of Education**,[2] the New Jersey Supreme Court held that a mandatory leave of absence which forced a teacher to leave her job at an arbitrary time and not return until a fixed date, solely due to pregnancy, was a violation of the New Jersey Law Against Discrimination, **N.J.S.A.** 10:5-1 **et seq.** In addition, the Court upheld the Commissioner's interpretation of the sick leave statute to find that a pregnant teacher must be allowed to utilize her accumulated sick leave while she is disabled, to the same extent that such is permitted for other types of leaves.

In a recent case decided by the Appellate Division, **Farley v. Ocean Township Board of Education**,[3] the court held that the Board treated pregnancy differently than other disabilities when it refused to pay two teachers for disability due to pregnancy. In this case, the teachers had been granted an unpaid "maternity" leave pursuant to the contract. When the birth of each teacher's child occurred prematurely, they asked to use sick leave while they were disabled after the birth until their unpaid leaves began. The Board refused their request and instead made the starting date of their unpaid leaves retroactive to the date of delivery, effectively denying them use of sick time for their actual disability. The court said:

> *In the instant case, disability due to pregnancy and childbirth has been singled out for disparate treatment; teachers temporarily disabled due to reasons other than pregnancy are entitled to utilize their accumulated sick leave, notwithstanding the occurrence of the disability immediately prior to an unpaid leave of absence.* [Emphasis added.] 174 **NJ Super** 449, 452.

Because of this disparate treatment, the Board was found to have violated the Law Against Discrimination.

Board Limits on Leaves

A school board may establish or negotiate policies which regulate the timing of childcare **and** pregnancy disability leaves by forcing the teacher to take an unpaid leave either prior or subsequent to the actual disability period in order to preserve educational continuity. However, if such a policy exists for pregnancy disability leaves, it must be applied to other anticipated leaves **not related to pregnancy**.

In **Gilchrist v. Haddonfield**,[4] the Appellate Division found that the Board of Education could refuse to renew the contracts of nontenured teachers who anticipate a disability leave of absence in the succeeding year on the basis that the leave would interrupt the continuity of

1 **Cinnaminson Township Board of Education v. Silver**, 1976 **S.L.D.** 738, aff'd State Board 1979 **S.L.D.** _____ (April 4).

2 **Castellano v. Linden Board of Education**, 158 **N.J. Super** 350 (App. Div. 1978) aff'd 79 **N.J.** 407 (1979).

3 **Farley v. Ocean Township Board of Education**, 174 **N.J. Super** 449 (App. Div. 1980).

4 **Gilchrist v. Board of Education of the Borough of Haddonfield**, 155 **N.J. Super** 358.

educational instruction. However, the Court made it clear that if such a policy were not applied to other leaves of absence, sex discrimination would have been found.

In a very recent case, **Dyson v. Montvale Board of Education,**[5] the Commissioner of Education upheld a board's policy of regulating the commencement of a teacher's request for a pregnancy disability leave to preserve educational continuity, where, in this case, the policy was applied non-discriminatorily and the teacher was allowed to utilize accumulated sick leave for the time she was disabled. The Montvale Board placed a teacher on an "involuntary" unpaid leave of absence commencing with the start of the school year, although she had asked only for a disability leave to begin when she was no longer capable of working (which would occur sometime prior to her anticipated delivery date in mid-to-late October). This was denied, since the Board believed that allowing the pregnant teacher to work 4-6 weeks at the beginning of the school year, and then to be replaced by a substitute until she returned at a semester break, would not be educationally sound. Note that in this case, the teacher was allowed to utilize her accumulated sick leave when she became disabled.

Unpaid Leaves

As opposed to pregnancy disability leaves (sometimes called maternity leaves), **unpaid leaves of absence for the purposes of childcare** are negotiable terms and conditions of employment. Whether or not a teacher is eligible for and receives such a leave depends solely upon the district's contract, policy, or past practice.

There has been much litigation of late concerning the issue of the use of sick leave while a teacher is on an unpaid leave of absence. In some instances a pregnant teacher who is capable of working may nevertheless request an unpaid leave prior to the birth to enjoy her pregnancy, to prepare her home for the child, or for other personal reasons. Alternatively, the district's contract may allow a one-year leave of absence that combines post-delivery childcare with an unpaid leave prior to the delivery.

In **Logandro v. Cinnaminson,**[6] the State Board of Eduation disagreed with the Commissioner of Education's conclusion that, "because a teacher on leave of absence is still an employee of the Board," she is entitled to utilize her accumulated sick leave for a disability which occurred during the unpaid leave. The State Board ruled that a school board may refuse to pay sick leave for every kind of disability arising during an unpaid leave of absence. What benefits are available to teachers who elect to take an unpaid leave are "...except when governed by statute, left up to collective negotiations...or between the board and the individual employee." (Slip opinion at p. 2)

In the **Logandro** case, however, the local board maintained a discriminatory policy (under the **Castellano** rule) of requiring pregnant teachers to take a full year's "maternity leave" rather than giving employees the choice of sick leave use limited to the period of actual disability. Because of this improper policy, the State Board affirmed the Commissioner's remedy of paying Mrs. Logandro for the sick days she should have been able to use if she had been given the choice and opted for a disability leave only.

In a subsequent case, **Headley v. Jefferson Township,**[7] the Commissioner of Education ruled that a teacher on an unpaid leave of absence that commenced prior to pregnancy disability could utilize sick leave when she became disabled, even though the superintendent gave her the option of taking a regular disability leave for the presumed disability period set forth in **Cinnaminson**. The peculiar facts of this case, however, complicate this holding. The teacher at first requested a one-year unpaid leave of absence to commence on her anticipated delivery date (November 26). The superintendent, in responding to the request, informed the teacher that, according to the contract, her unpaid leave would have to commence no later than the 7th month of pregnancy, i.e., September 26. He suggested, instead, that the teacher take her leave for the entire school year, beginning September 1. This would be better for the children, the superintendent stated. Accordingly, the teacher modified her request to comply with the superintendent's suggestion.

The Commissioner found that the teacher should have been allowed to utilize sick leave while she was disabled during the unpaid leave. The **forced choice** of a leave for post-delivery childcare, commencing at the beginning of the school year, and a regular disability leave was improper, he ruled, unless the teacher could use sick leave while disabled during the unpaid leave.

The confusing conclusions of **Headley v. Jefferson Township** and **Logandro v. Cinnaminson** should be resolved in the near future since the **Headley** case is on appeal.

Districts are advised to carefully review their policies and negotiated provisions on both pregnancy disability and childcare leaves. The cases described above must not be contravened, and if necessary, districts should modify their policies and contracts to comport with the state of the law. In addition, negotiations should focus on protecting management discretion to regulate negotiable childcare leaves and retaining for the Board the ability to preserve educational continuity through limits on starting and ending dates for disability leaves (both pregnancy **and** others).

Negotiating Pregnancy Disability and Childcare Leave Clauses

An analysis of pregnancy disability and childcare leave clauses indicates the following components:

For pregnancy disability

1. **Notice and application procedures.** For planning and staffing purposes the board will want to be notified of the anticipated delivery date, or date of absence due to any anticipated disability as soon as possible. Oftentimes, the notice provision is combined with the application for an unpaid childcare leave to commence subsequent to the delivery, or even one which starts prior to pre-delivery disability.

5 **Dyson v. Montvale Board of Education,** 1980 **S.L.D.** _____, (July 21).

6 **Logandro v. Cinnaminson Township Board of Education,** 1979 **S.L.D.** _____ (August 6) aff'd in part, reversed in part, State Board 1980 **S.L.D.** _____ (June 11).

7 **Headley v. Board of Education of the Township of Jefferson,** 1980 **S.L.D.** _____ (June 27).

2. **Limits on disability leaves.** Some boards may want to limit the starting and ending times of a disability leave in order to preserve educational continuity. For example, if a teacher anticipates a two-month disability to begin on October 25, the board may want the right to require the teacher to take an involuntary leave starting in September and ending with the start of the second semester. Such limits must be negotiated.

3. **Verification of disability.** Under **Cinnaminson**, a presumption of disability exists for the 9th month of pregnancy and for one month following the birth of the child. For that period, a non-specific doctor's certificate indicating the anticipated delivery date is sufficient verification. Should a teacher request a disability leave prior to the 9th month, or if the board feels that the teacher is not physically able to perform her job during the pregnancy, additional verification may be demanded. This is also true for disabilities which extend one month beyond the birth of the child.

For childcare leaves

1. **May/shall.** Is the unpaid leave mandatory if other conditions are met? Or does the board have some discretion regarding staffing requirements and educational planning?

2. **Maximum number.** Although pregnancy isn't contagious, it does seem as though requests for leaves come several at a time. If the board feels it necessary, limits on the number who are out on childcare leave at any one time could be negotiated.

3. **Notice and application procedures.** For planning and staffing, applications should specify the anticipated commencement of the leave, the requested length of the leave and the requested termination date.

4. **Qualifications for unpaid childcare leaves.** Is tenure or a minimum number of years in the district a requirement that the board has for granting the leaves? Are childcare leaves available to adoptive parents, and under what conditions?

5. **Length of leave.** Six months? One year? What about extensions? The contract's provisions should clearly state the length(s) of leaves available. Care should be taken regarding extensions. Several districts have had problems with mandatory one-year childcare leaves and mandatory extensions that have ended up lasting five or six years.

6. **Commencement and Return Dates.** Limits on the commencement and termination dates of unpaid childcare leaves are desirable in order to minimize instructional disruptions. The beginning of the Fall and Spring semesters are the logical times for commencement and termination of unpaid leaves of absence.

7. **Placement on the guide upon return from the unpaid leave.** How long must a teacher work in the school year before the increment is earned? What about credit toward sabbatical and longevity payments? Some districts require at least 90 days work before the increment is paid (or 90 days salary by using some portion of accumulated sick leave during maternity/disability.)

8. **Continuation of benefits while on leave.** Two aspects of this must be noted: eligibility for benefits while on unpaid leave and accrual of benefits during the leave. Both are controlled in some part by statute. Whether district employees can maintain their health plan coverage during an extended leave without pay is affected by the insurance carrier and should be discussed with your board attorney. Whether paid sick leave can be used during the middle of an unpaid leave is currently being litigated. Whether sick leave can be accrued during a leave without pay may also require an interpretation of statute and eventual Commissioner and court decisions.

Where the benefits are created and controlled strictly by the contract, on the other hand, the effect of the leave on those benefits is negotiable. See "Placement on the guide upon return from the unpaid leave," above.

9. **Miscellaneous.** Most boards propose that their contract contain the limitation that a non-tenured teacher's childcare leave cannot extend beyond his/her employment contract. This assumes, of course, the childcare leave is granted to persons who do not have tenure.

Using these components, the following are pregnancy/disability and childcare clauses which would seem to protect the interest of most school boards in the granting of these leaves. This is not an unconditional endorsement of language that follows, but simply a model to which you may compare your current language. Each individual district's goals should be reflected in its bargaining proposals on these kinds of leaves.

Disability Leaves

1. *A teacher who anticipates a disability shall notify his/her immediate supervisor in writing of the anticipated commencement of the disability as soon as the employee knows of it.*
   a) In the case of pregnancy, the teacher shall inform the supervisor of the anticipated delivery date.
   b)No later than 90 days prior to the anticipated delivery date, the teacher shall request either a leave of absence while she is disabled, for which accumulated sick leave may be utilized, or an unpaid leave of absence for childcare, as provided for in 3, below.

2. *The Board of Education reserves the right to regulate the commencement and termination dates of anticipated disability leaves in order to preserve educational continuity. When this occurs, a teacher who is placed on an involuntary unpaid leave shall be entitled to all sick leave and insurance benefits during the period of actual disability, according to the negotiated agreement and the rules of the insurance carrier. However, time spent on an unpaid leave shall not be counted for accrual of any benefits.*

Childcare Leaves

1. *The board may grant voluntary unpaid leaves of absence for the purposes of childcare of an infant to no more than _____ teachers who fulfill the requirements set out below. Approval is conditioned upon adequate staffing as determined by the board of education. No requests will be disapproved arbitrarily, discriminatorily or capriciously.*

2. *Childcare leaves are available only to tenured teachers.*

3. *Such leaves of absence may be for one-half school year or one full school year at the request of the teacher and the approval of the board. Extensions will only be granted in extreme emergencies at the complete discretion of the board of education.*

4. *To avoid unnecessary interruptions in instruction, childcare leaves shall commence on either September 1 or February 1, and shall terminate on the September 1 or February 1 following the leave.*

5. *A teacher desiring an unpaid leave shall apply no less than 90 calendar days before the anticipated delivery date of the infant. In the case of an adoption, notice shall be given to the teacher's supervisor when application for the adoption is made. In cases of adoption, application shall be made for a specific leave period as soon as the teacher is informed of the custody date.*

6. *To be eligible for a salary increment and credit toward longevity payments and sabbaticals, a teacher must work at least ninety days in the school year that the leave commences or terminates.*

7. *A teacher on a voluntary unpaid leave of absence shall not be eligible to either receive or accrue benefits except as statutorily required.*

Conclusion

The legal issues affecting childcare leaves and disability leaves (maternity leaves) are not 100% clear. What benefits by law accrue to teachers who are on such leaves of absence is currently in dispute. When negotiating childcare leaves, keep in mind the protection of the board's interests. When negotiating disability leaves, be aware that your policies on pregnancy disability cannot vary from other kinds of anticipated disabilities for which sick leave is available.

If you have any questions regarding these matters, please contact your local field service representative or the Labor Relations Department. If you have a question regarding legal requirements concerning pregnancy disability leave and sick leave, please contact your board attorney or the NJSBA's Legal Department.

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Decisions Affecting Negotiations

Listed below are a number of court and PERC decisions which affect negotiations.

Authority of a Board's Negotiating Team

Bergenfield Board of Education and Bergenfield Education Association, PERC No. 90, 1 **NJPER** 44. *Unless otherwise noted, a board's negotiating team can bind the entire board to a tentative agreement.*

Good Faith Negotiations

State v. N.J. Council of State College Locals, 141 **N.J. Super** 470 (App. Div. 1976). *The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party.*

Scope of Negotiations

Bethlehem Township Board of Education and Bethlehem Township Education Association, PERC No. 80-5, 5 **NJPER** 10159. *Tenured teacher evaluation procedures are negotiable as long as contracts do not conflict with State Board of Education rules. Related educational policy questions are non-negotiable.*

Carteret Education Association and Carteret Board of Education, PERC No. 80-30, 5 **NJPER** 10205. *The decision to assign teachers to after school workshops that do not involve student supervision is a mandatorily negotiable term and condition of employment.*

Cinnaminson Township Board of Education v. Cinnaminson Teachers' Association, affirmed in part, unpublished App. Div. opinion, June 1, 1979, cert. denied 81 **N.J.** 341 (1979). *The decision to RIF, the procedural details, and the incidental "impact" are non-negotiable.*

Commercial Township Education Association and Commercial Township Board of Education, PERC No. 80-20, 5 **NJPER** 10195. *A board-teacher liaison committee that discusses non-terms and conditions of employment is itself a mandatory subject as long as the board retains final authority to exercise its managerial discretion.*

Dunellen Trilogy, The

Dunellen Board of Education v. Dunellen Education Association, 64 **N.J.** 17 (1973). *The decision to abolish the position of department chairman is non-negotiable.*

Burlington County College Faculty Association v. Board of Trustees, 64 **N.J.** 10 (1973). *The establishment of the school calendar is a non-negotiable management decision.*

Englewood Board of Education v. Englewood Teachers Association, 64 **N.J.** 1 (1973). *Placement on salary guide is a mandatory subject of bargaining.*

Englewood Board of Education and Englewood Teachers' Association, 150 **N.J. Super** 265 (App. Div., 1977). *The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.*

Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers' Pension and Annuity Fund, Division of Pensions, Department of Treasury, State of New Jersey, 161 **N.J. Super** 67, affirmed, 79 **N.J.** 574 (1979). *Retirement incentive plans are illegal.*

1 PERC or the courts can alter case law at any time. Before relying on these decisions, please check on whether they are currently good law. In addition, this is not an exhaustive list. For example, as of writing, there have been over 150 PERC scope of negotiations decisions. Only a few are listed here.

Fairview Board of Education and Fairview Education Association, PERC No. 80-18, 5 **NJPER** 10193. *A contract provision that holds that a violation of evaluation procedures for non-tenured teachers is grounds for reinstatement is not negotiable.*

Hazlet Township Board of Education v. Hazlet Township Teachers Association and Public Employment Relations Commission, unpublished App. Div. opinion, March 27, 1980. *The application of evaluation criteria is not negotiable or arbitrable.*

Hunterdon Central High School Board of Education v. The Hunterdon Central Regional High School Teachers' Association, 174 **N.J. Super** 468, (App. Div. 1980). *Payment for religious observance without charging the leave to general personal leave or vacation time is unconstitutional.*

Long Branch Education Association, Inc., v. Board of Education of the City of Long Branch, Monmouth County, 150 **N.J.** 262 affirmed O.D. 73 **N.J.** 461 (1977). *Assignment of teachers to lunchroom supervision is an educational policy decision.*

Maywood Board of Education and Maywood Education Association, 168 **N.J. Super** 45, cert. denied 81 **N.J.** 292 (1979). *Impact bargaining on RIFs is illegal.*

Newark Board of Education and Newark Teachers' Union, Local 481, A.F.T., AFL-CIO, unpublished App. Div. opinion, Feb. 26, 1980. *Change in preparation periods constitutes a change in workload and is, therefore, mandatorily negotiable.*

Piscataway Township Board of Education v. Piscataway Maintenance and Custodial Association, 152 **N.J. Super** 235 (App. Div., 1977); **Ramsey Teachers Association v. Board of Education of the Borough of Ramsey,** unpublished App. Div. opinion, May 30, 1980. *Blanket, extended sick leave contract clauses are illegal and unenforceable.*

Piscataway Township Board of Education v. Piscataway Township Principals' Association, 164 **N.J. Super** 98 (App. Div., 1978). *The decision to reduce the work year from 12 months to 10 months is a required topic of negotiations.*

Ramapo-Indian Hills High School District Board of Education and Ramapo-Indian Hills Education Association, PERC No. 80-9, 5 **NJPER** 10163. *Decision to assign teachers to extra-curricular activities and the work hours normally associated with these activities are non-negotiable.*

Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 **N.J.** 144, (1978). *C.123 did not create a permissive category. Transfers are non-negotiable.*

State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195 IFPTE and Local 518 SEIU, 78 **N.J.** 54, (1978). *General statutes giving authority to employers do not render negotiations over terms and conditions illegal. Specific statutes and regulations that govern terms and conditions of employment cannot be abrogated by contract.*

Teaneck Board of Education and Teaneck Teachers Association, 161 **N.J. Super** 75 (App. Div., 1978). *Criteria for evaluation and the content of evaluations cannot be negotiated.*

Scope of the Grievance Procedure

Bernards Township Board of Education v. Bernards Township Education Association, 79 **N.J.** 311 (1979). *Withholding an increment is not grievable to binding arbitration. Parties may negotiate advisory arbitration procedures to cover management prerogatives affecting individual employees.*

Township of West Windsor v. Public Employment Relations Commission and P.B.A. Local 130, 78 **N.J.** 98, (1978). *The terms of all negotiated grievance procedures must "cover" grievances concerning the interpretation, application or violation of policies, agreements and administrative decisions affecting terms and conditions of employment.*

Employer Changes in Terms and Conditions

New Jersey Institute of Technology and Newark College of Engineering Professional Staff Association, PERC No. 80-27, 5 **NJPER** 10202. *Where increases in workload are "inescapably intertwined with and inseparable from" an educational policy decision, negotiations over the increased workload are not required.*

Rutgers, The State University and AFSCME, Council 52 and Local 1761, PERC No. 80-26, 5 **NJPER** 10201. *Clear contract language can constitute a waiver by the union to its right to negotiate a change in working hours.*

Warren Hills Regional Board of Education and Warren Hills Regional Education Association, PERC No. 78-69, 4 **NJPER** 4094. *Even though an educational policy decision to go to split sessions necessarily affects teachers' terms and conditions of employment, that fact does not change the right of the board to make that decision.*

Woodstown-Pilesgrove Regional High School District, Board of Education of v. Woodstown-Pilesgrove Regional Education Association, 81 **N.J.** 582 (1980). *The effect of a management decision on terms and conditions of employment is no longer automatically negotiable, but would depend upon whether the dominant issue primarily involves either an educational policy decision or a term and condition of employment.*

Discrimination Due to Union Activity

Brookdale Community College and George S. Abel, unpublished App. Div. opinion, Jan. 9, 1980. *College's denial of promotion was not justified by a substantial or legitimate business interest and was, therefore, due to employee union activity.*

Haddonfield, Borough of Board of Education of and Haddonfield Supportive Staff Association, PERC No. 77-36, 3 **NJPER** 71. *PERC's test for finding a violation of Section 5.4 (a)(3) of the PERC Law is defined.*

Laurel Springs Board of Education and Mary Becker, PERC No. 78-4, 3 **NJPER** 228. *"Totality of conduct" test for finding violations of 5.4(a)(3) and (a)(1) is described.*

Manalapan-Englishtown Regional Board of Education and Edward A. Barrett, Superintendent, and Manalapan-Englishtown Educational Association, PERC No. 78-91, 4 **NJPER** 4134. *Board did not commit 5.4(a)(3) and (1) violations when it disciplined union president for disobeying order not to use students to send union position statements to parents.*

North Warren Regional Board of Education and North Warren Education Association, PERC No. 79-9, 4 **NJPER** 4187. *Employers retain the right to discharge, discipline or refuse to promote employees for reasons unrelated to union activities. The burden is on the union to prove a violation.*

Department Chairpersons as Supervisors

River Dell Board of Education and River Dell Education Association, PERC No. 78-85, 4 **NJPER** 4128. *Department Chairpersons are excluded from a bargaining unit with teachers due to "conflict of interest" arising out of teachers' strike.*

Maternity Leave, Childcare and Sick Leave Benefits

Board of Education of Cinnaminson v. Silver, 1976 **S.L.D.** 738, aff'd, State Board, 1979 **S.L.D.** (April 4). *Employees are entitled to use their accumulated sick leave because of pregnancy-related disability.*

Gilchrist v. Board of Education of Haddonfield, 155 **N.J. Super** 358 (App. Div., 1976). *Nonrenewal of nontenured pregnant teachers based on board policy minimizing classroom instruction interruptions is not discriminatory.*

Castellano v. Linden Board of Education, 79 **N.J.** 407 (1979). *Employers may neither deny employees with pregnancy-related disabilities the right to use accumulated sick leave nor establish a mandatory leave policy for pregnant teachers.*

NJSBA Analysis of the NJEA Sample Agreement for 1981-82

The above title is somewhat misleading. The NJEA has not revised its Sample Agreement of last year; it has merely reissued it. We, however, have made substantial changes in our analysis of that document because of changing trends in bargaining and new interpretations of law by PERC and the courts.

Because the importance of case law in the bargaining process has increased dramatically since the Supreme Court's **Ridgefield Park** decision in August of 1978, we have changed the format of our analysis. Besides noting the practical problems with certain clauses, we have cited over 25 specific PERC or court cases which affect the legality of particular contract articles. This is not intended to transform all our readers into quasi lawyers; but it will help the board negotiator who needs more detail on the negotiability of a union demand to find the appropriate case.

As always, you should analyze contract demands at issue in your district's negotiations in terms of their meaning and effect when applied to your particular school system.

On the left of each page appears the text of the NJEA Sample Agreement. On the right of each page appears our commentary. Reference to **"PERC"** refer to **What Every School Board Member Should Know About the PERC Law** (copyright 1979, NJSBA); **"Administering the Negotiated Agreement"** (copyright 1980, NJSBA), frequently referred to regarding the grievance procedure, is the newest addition to our School Board Library Series.

The NJEA sample language on Agency Shop is entitled "Representation Fee". It is located at p. _____

PREAMBLE

This Agreement entered into this day of 19 , by and between the Board of Education of , the City of , New Jersey, hereinafter called the "Board," and Association, hereinafter called the "Association."

This section notes the date the contract was entered and is standard and acceptable.

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the School District is their primary aim and that the character of such education depends predominately upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The first two whereas clauses are illegal topics of negotiation. **Fairview Board of Education**, PERC No. 80-18.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: "*From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted.*" (See **The Law and Practice of Teacher Negotiations**, 3:16, cited in **Bibliography**, earlier.)

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

This is standard language.

Article I, *Recognition*

A. **Unit**

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, and social workers. The unit will differ from district to district.

A few districts have "mixed units" containing certificated personnel and some or all of the non-professional employees in the district.

Under Chapter 123, the superinten-

dent and assistant superintendent must be excluded from all bargaining units. Confidential employees also are excluded from bargaining units under Chapter 123. Should the board have any questions concerning the propriety or appropriateness of the bargaining unit as constituted, it may file with PERC a petition for clarification of unit. In addition, new supervisory bargaining units may not be represented by unions which admit nonsupervisors to membership (such as the NJEA). Nor can a unit formed after 1968 contain supervisors and non-supervisors. (For a full discussion of bargaining units see PERC, Chapter Two, "Representation.")

PERC's Director of Representation has ruled that substitute teachers who meet certain strict criteria have the right to negotiate under Chapter 123. **Bridgewater-Raritan Board of Education**, D.R. No. 79-12.

With the passage of time there may arise some difficulty when new titles are created in the district. There are several ways which can be used to resolve these unit problems. If you encounter difficulty, call your professional negotiator, board attorney or Field Service Representative for a full discussion of such matters as unit clarification, supervisory exclusion or unit consolidation.

B. Definition of Teacher

Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. The board may wish to reserve certain rights and privileges only to classroom teachers and/or to full-time employees, such as preparation periods or tuition reimbursement. Whether or not you have such a definition, be careful to specify when a contract clause does not apply to all employees.

Article II, ***Negotiation of Successor Agreement***

A. Deadline Date

The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1975 in a good-faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

Under the Rules and Regulations of PERC, there is now a beginning date for negotiations on successor agreements. This year it is about December 8. If the parties agree to begin at a later date they may do so.

The Sample Agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract which

has not even taken effect. While timing of negotiations is within the power of the parties subject only to PERC's rules, this last point should be kept in mind.

Regarding the last sentence: you should always notify the union prior to negotiations that the full board of education retains the right to ratify or reject any agreements reached during negotiations. Boards should not agree to a clause like this last sentence.

B. Grants from Federal or State Agencies
The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided; however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid
The Board agrees to reopen negotiations and permit amendments to any section of this Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. No mention is made, it is noted, of reopening negotiations in the event of a **decrease** in State or Federal aid. No New Jersey boards have agreed to such a clause.

D. Modification
This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Section D. is a standard clause and should be retained in the agreement.

Article III, *Grievance Procedure*

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes.

For a thorough analysis of the legal and practical considerations that affect grievance procedures, see **Administering the Negotiated Agreement**, pp. 1-24. This book also contains a sample grievance procedure at Appendix D which modifies much of the NJEA Sample Agreement language to make it more workable for school boards and administrators.

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions and practices affecting a teacher or a group of teachers.

The definition of a grievance has been **mandated** for all public sector labor contracts by the Supreme Court's **West Windsor** decision. This case is discussed in detail in **Administering the Negotiated Agreement**, pp 4-7. Please refer to this publication and direct questions to your board attorney, professional negotiator or the NJSBA Labor Relations Department.

It is strongly recommended that the board seek two procedures in the agreement or carefully detail grievances that begin and end at **different** levels. This approach is consistent with the **West Windsor** decision.

Boards which have agreed to an arbitration clause should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions and practices" should not fall under an arbitration clause.

Boards should avoid agreeing to a grievance definition that includes "practices" as grievable, because the word is too ambiguous: consistent practices, known practices, building practices, grade practices, random practices or individual supervisor practices? If you exclude the words "and practices," grievances can be defined as listed in this **Sample Agreement** paragraph. However, only grievances over alleged violations or misinterpretation of the contract should proceed through all grievance steps including binding arbitration. Grievances concerning "policies" should start and end with the board. Grievances concerning "administrative decisions" might start with the administrator responsible for the decision and end with the board. Grievances over statutes and regulations should start with the superintendent and end at the board, subject to appeal to the appropriate administrative agency. See **Administering the Negotiated Agreement**, pp. 18-23.

These different initiation and terminal steps in this "multi-track" grievance procedure would meet your obligations under **West Windsor** and limit grievance review to the logical levels.

The Supreme Court strongly endorsed this multi-track approach in its decision.

2. Aggrieved person
An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest
A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

Who May File a Grievance: The Supreme Court decided on August 3, 1978, that the majority representative union has the constitutional and statutory right to present grievances on behalf of employees, and that this right cannot be waived through contrary contractual language. The case,

involving the **Red Bank Regional Board of Education**, 78 N.J. 122, thus prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether a union can file a grievance against the wishes of the affected employee.

B. Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

The purpose of the grievance procedures is not to achieve "equitable" solutions, but to resolve differences concerning the rights of the parties regarding the terms and conditions of employment of the employees covered by the contract. The sample language grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice. This is too broad a grant of authority to an arbitrator.

C. Procedure

1. Time limits

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

Time Limit: The Sample Agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider a grievance, propose different time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two weeks would not seem so. This time limit should appear prior to or in the first step of the procedure.

The phrase "should be considered" is unnecessary and should be replaced by the word "is".

2. Year end grievances

In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

3. Level one – principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

The Sample Agreement's procedure begins with the principal or immediate superior and goes on to the superintendent. Those boards which have department chairmen may wish to involve these supervisors in the grievance procedure.

Boards should note with interest that there is no place in the NJEA Sample Agreement for the board of education. As the legally constituted body responsible for education, this omission is inexcusable. The

4. Level two – superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5) school days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

5. Level three — arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

grievance steps should reflect the actual chain of supervision in your school district. The board's role in the procedure would normally follow the chief school administrator's. School boards are, almost without exception in New Jersey, included as a step in the grievance procedure.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. 40% of school boards have not agreed to binding arbitration. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," or a "past practice clause." Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the board should insist on a "no strike or work stoppage" clause.

If you have agreed to binding arbitration, it is now critical because of the **West Windsor** decision to limit such arbitration to the "express terms of the written Agreement." Whether or not you have done that earlier in your procedure, you should do it here also. See **Administering the Negotiated Agreement**, p. 22, for sample language. This is certainly one issue on which hard bargaining may be required to protect the very functions of public management of education and avoid unnecessary and frivolous grievances.

The following language should also be contained in any arbitration clause to limit the arbitrator to his or her proper role: "*The arbitrator shall be limited to the issues submitted and shall consider nothing else. The ar-*

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

bitrator can add nothing to nor subtract anything from the Agreement between the parties."

You should be aware of the "self-help" rule. Most arbitrators will hold that an employee must carry out any directive (unless it threatens his or her health or safety) and cannot refuse to do so on the grounds that the directive violated the contract. Employees who violate this procedure (also commonly referred to as the "work, then grieve" rule) might ultimately win on whether the directive was in violation of the contract, but lose on the issue of the employer's discipline of the employee for insubordination.

Boards should not agree to 5.d. This clause is designed to remove PERC and the courts from making decisions on what is negotiable and arbitrable, and is not in the best interest of the board. 5.e. is standard. See **Administering the Negotiated Agreement**, pp. 83-85 and pp. 131-133 for a detailed discussion of arbitrability.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or at his option by representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

D.1. This is standard language. The first sentence is a paraphrase of law regarding the right to Association representation. It implies, however, that an employee can demand to represent himself during arbitration, not likely the intent of the clause. The second sentence is general labor relations practice.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate superior. The second sentence is merely **negotiable** beyond step one of the grievance procedure; it is not a statutory right. See **Red Bank**, above.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4. Of course, E.4.'s last few phrases might require a board to distribute grievance forms on a regular basis, a thoroughly ridiculous act.

A "Sample Grievance Form" is contained in **Administering the Negotiated Agreement** at p. 200.

5. Meetings and hearings

All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

E.5. is a standard clause. It cannot be used, however, to deny an employee any rights he has under the "Sunshine Law" to compel a public discussion of his grievance. See **New Milford Board of Education**, PERC No. 81-36.

Article IV, *Teacher Rights*

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws 1975, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1975 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

This is an example of an unnecessary commitment to a paraphrase of law. The PERC law provides: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of reprisal, to form, join and assist any employee organization or to refrain from any such activity." Note that the Sample Agreement language does not protect employees who don't join the NJEA, although the PERC Law does. (See "Negotiating Agency Shop," p. , for a discussion of the recent infringement on the "right to refrain" from supporting a labor organization.)

School boards should also avoid the phrase beginning on the fourth line: *"and other concerted activities for mutual aid and protection."* This is not defined, but is an addition to the PERC Law language, and could be used by the union to justify illegal job actions and strikes.

Boards should generally refrain from placing statutory provisions in labor agreements. If references must be made to law, they should be **specific** references, not paraphrases. Furthermore, boards should think twice before agreeing to allow arbitrators to make determinations on the meaning of statutes. An arbitration clause that is limited to the "terms of this agreement" would probably permit an arbitrator to rule on alleged violations of statutes which are referenced in the agreement. **The arbitration clause can be**

as narrow as the parties make it. You can exclude disputes over statutory terms and conditions of employment from arbitration.

B. Statutory Savings Clause
Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

The second sentence is a "past practice" clause. The goal of this sentence is to freeze all existing "benefits." If this sentence is present anywhere in your contract your administrative personnel may never be sure of whether a certain practice is a teacher "benefit." Boards should never agree to a contract clause the meaning of which is unclear. The union should be asked which "benefits" it seeks to guarantee by this sentence. That question may result in a withdrawal of the demand. On the other hand, their answer may make you think twice about agreeing to this sentence.

C. Just Cause Provision
No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

The difficulty with Section C is two-fold: parts of it are virtually impossible to define; other parts concern illegal topics for negotiations. For example, the decision to discharge a teacher for poor performance or in a reduction-in-force is non-negotiable and non-arbitrable. **Fairview**, PERC No. 80-18; **Maywood**, 168 **NJ Super** 45. The decision to withhold the increment cannot be grieved to binding arbitration. **Bernards Township**, 79 **N.J.** 311 (1979). "Professional advantages," if it refers to assignments or the availability of aides, is non-negotiable. Transfers, even if for disciplinary purposes, are not arbitrable. **Jefferson**, PERC No. 80-21. Letters of reprimand are defined by PERC as "the application of evaluation criteria" and are therefore not arbitrable. **Neptune**, PERC No. 80-109. Adverse evaluations are not arbitrable. **Hazlet**, App. Div. March 27, 1980 (unpublished).

It is uncertain what, if any, topics could legally be subject to a just cause standard before an arbitrator. Because of the complexity of the "just cause" standard, please seek guidance prior to even discussing this issue in negotiations. It is usually better to agree to a number of specific and understandable clauses than to a single clause with as much uncertainty as this one.

D. Required Meetings or Hearings

Whenever any teacher is required to appear before any administrator or supervisor, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

An employee has a statutory right to representation in an investigatory meeting which he reasonably believes could result in discipline. **North Warren Regional Board of Education,** PERC No. 79-9. Much of this clause is therefore unnecessary. But note that this right does not apply to evaluation conferences. Before agreeing to any clause such as this, boards should insist on knowing exactly what meetings the union has in mind.

The last sentence requires that suspensions be with pay. Suspension of teaching personnel should be without pay because of the difficulty in obtaining reimbursement of monies paid to employees who subsequently lose appeals before the Commissioner.

E. Evaluation of Students

The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the
School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

The **Ridgefield Park** decision renders this an illegal subject. But even prior to that decision, it seemed clear that the clause was a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor from quasi-judicial review by the Commissioner or judicial review by the courts. **Talarsky v. Edison Township Board of Education,** 1977 S.L.D. 862.

F. Criticism of Teachers

Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

G. Association Identification

No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

This section, if enforced in every case, probably would run counter to the Sunshine Law. Court decisions have determined that it is the individual employee who can select or reject public discussion of a personnel matter. The union cannot waive individual rights. If a teacher, for example, desires a discussion of his or her teaching performance to be held in public, the intent of this clause would have to be violated by the board as it complied with the Open Public Meetings Act.

Article V, *Association Rights and Privileges*

A. Information

The Board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists,

A. goes well beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there

annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is **reasonably** needed to carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract and is probably an illegal topic of negotiations.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. Released Time for Meetings
Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

B. could be agreed to if the "no loss of pay" provision covered employees **mutually scheduled** to participate in union activities.

C. Use of School Buildings
The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required.

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular program in the district. It would be wiser to retain prior approval.

D. Use of School Equipment
The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

D. requires no advanced approval. Is this acceptable to your administrators?

E. Bulletin Boards
The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

F. Mail Facilities and Mail Boxes
The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

G. Office Space
The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

H. Leave for Association President
The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

G., H. Most districts will find it impossible to comply with these demands.

I. Released Time for Faculty Representative
The Board shall provide up to ( ) hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

J. Orientation Programs
All orientation programs for new teachers shall be co-sponsored by the Board and the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

J. makes the union an equal partner with the board and administration in orientation programs. The advisability of this depends on your district's relationship with its teachers' union.

K. Sub Contracting
The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

PERC had held subcontracting to be a required subject for negotiations. **Local 195, IFPTE**, PERC No. 80-85. This decision was recently reversed by the Appellate Division, which declared subcontracting to be non-negotiable. This may be appealed. Until a final determination is made, boards should not agree to a clause prohibiting subcontracting. Regarding supervisors, on the other hand, the teachers' union has no authority to negotiate over who will supervise teachers; this part of the claim is clearly illegal.

L. Exclusive Rights
The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI, *Teacher Work Year*

A. In-School Work Year

1. Ten (10) month personnel
The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional ( ) days of orientation) shall not exceed ( ) days. The first day of the in-school work day shall commence no earlier than September , 19 , and the last day shall be no later than June , 19

2. Twelve (12) month personnel
a. The in-school work year of teachers employed on a twelve (12) month basis shall not exceed ( ) days.
b. Teachers on a twelve (12) month basis shall be entitled to ( ) vacation days, which shall occur between July 1 and August 31.

The second sentence of A.1. attempts to establish the beginning and ending dates of the academic calendar. C.1. attempts to establish through negotiations the vacation breaks within the academic calendar. The **Burlington County College** Supreme Court decision and recent PERC decisions hold that, while the actual number of days to be worked in a year is negotiable, the placement of those days is not.

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with

teachers is usually all that is needed, and is generally a good practice. But a clause requiring consultation **prior** to establishing or changing the calendar is not negotiable. **New Milford,** PERC No. 81-36.

3. Definition of in-school work year
The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

4. Inclement weather
Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

B. Holidays
Teachers shall be entitled to the following holidays: (* denotes legal holiday)

*Labor Day
Rosh Hashanah
*Columbus Day
Yom Kippur
*Election Day
*Veterans' Day
*Martin Luther King Day
*Lincoln's Birthday
*Washington's Birthday
*Good Friday
*Memorial Day
*Independence Day
*Christmas Day
*New Years Day
*Thanksgiving Day

Teachers have a statutory right to leave with pay on legal holidays. Most districts do not close school on these days, however, in order to provide Christmas and spring vacation periods and an early June dismissal; the great majority of teachers cooperate by attending school on these days when so scheduled.

C. Vacation Periods
1. Teachers shall be entitled to the following vacation periods each year of the contract:
November_____ - November_____
December_____ - January_____
April_____ - April_____
Other_____ - _____

2. The work day prior to a vacation period shall be a half day (not to exceed four (4) hours).

D. Voluntary Work
The Board and/or the Administration may request voluntary work. However, any voluntary work performed on or during a holiday or vacation period shall be compensated at double the daily rate as determined by a 180-day work year. A teacher shall have the right to refuse to perform volunteer work during a holiday or vacation period.

This is a typical trade union proposal. Double time has never been agreed to by a school board for its professional staff.

Article VII, *Work Hours and Work Load*

A. Work Day
1. Teachers shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

A.1. Boards may desire more proof of presence than a check mark on a roster.

2. The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school work day shall consist of not more than ( ) hours and ( ) minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

A.2. While the length of the school day is a required subject of negotiations, you must be very careful to avoid limiting district operation. Districts which negotiate **total** hours of the work day, rather than the **actual times** employee attendance is required, have substantially more flexibility to meet changing conditions.

3. Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than ( ) minutes before the opening of the pupil's school day, and shall be permitted to leave ( ) minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays, the teachers' day shall end at the close of the pupils' day.

4. Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE VI, Section A.1, or beyond his/her total in-school work day as defined in paragraphs 2 and 3 above, shall be compensated at the rate prescribed in ARTICLE VI, Section F.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

A.4. Should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading and preparation must be additionally compensated for.

Few boards have agreed to this clause. Most provide some additional compensation for specific duties.

A Commissioner's decision, upheld by the New Jersey Supreme Court, supported the right of boards to make assignment of non-teaching duties to teachers. The Commissioner stated:

A long history of the teaching and supervising of children in public schools has proven that the teacher, with his/her training, experience and knowledge of children, is the best and most effective person to control such situations. This is the reason why teachers have been relied upon, since the virtual inception of the common school as it was originally known, as the persons best able and most suitable to protect the health, safety and welfare of the tens of thousands of school age children whom parents have entrusted to the care of the public schools. **Long Branch,** 74 **S.L.D.** 1189. See also **Plainfield** PERC No. 80-42.

B. Workload

1. Junior and Senior High School

a. The daily workload in the junior and senior high school shall be ( ) students per day which shall be equitably distributed through ( ) teaching periods per day and shall not exceed ( ) hours per day.

b. Junior and Senior High School teachers shall not be required to teach more than ( ) subject area(s), nor more than a total of ( ) teaching preparations.

c. Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than ( ) time(s) during the school day.

d. Secondary teachers shall not be required to teach continuously for more than ( ) periods, nor ( ) where double periods are used.

2. Elementary School

a. The daily workload in the elementary school shall be ( ) students per day and shall not exceed ( ) hours per day.

b. Regular classroom teachers in the elementary school shall not be required to change teaching stations.

c. Elementary teachers shall not be required to teach continuously for more than ( ) hours.

d. Grade level workload shall be equalized.

B.1.a. and B.2.a. are, in part, class size clauses; class size is an illegal topic of bargaining since the **Ridgefield Park** decision. PERC has further held that the effect upon workload of an increase in class size is not negotiable because it is "inescapably intertwined and inseparable from" the decision to increase class size. **N.J.I.T.**, PERC No. 80-27. By contrast, PERC has generally held that the number of assigned teaching periods and duty periods per day involves "work hours" and is a required topic for negotiations. **Buena Reg.**, PERC No. 79-63.

B.1.b., c., d., and B.2.b, c., and d.

are illegal topics for negotiations. Teacher assignments are a central aspect of a district's educational program. Such clauses are rare in teachers' agreements.

3. Specialists

The workload of each specialist shall be equalized and shall be determined by the following number of students per specialist:

a. Elementary Level	Options-Per Day/ Per Period/Per Wk.
Art Teachers	_____
Vocal Music Teachers	_____
Foreign Language Teachers	_____
Physical Education Teachers	_____
Guidance Counsellors	_____
Reading Specialists	_____
Nurses	_____
Instructional Media Specialists (Librarians)	_____
Other	_____

b. Secondary Level	Options-Per Day/ Per Period/Per Wk.
Guidance Counsellors	_____
Reading Specialist	_____
Instructional Media Specialists (Librarians)	_____
Distributive Education	_____
Nurses	_____
Other	_____

c. Specialists shall not be required to teach continuously for more than ( ) hours.

B.3. is the equivalent of a class size clause and is probably illegal.

4. Reduction of Workload Exceptions

Any class based on the maximum per teacher limits stated in paragraphs 1,2, and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,

b. The appropriateness of the room to content of the course, the methods of instruction to be employed, and the prior preparation of teachers therefore,

c. The availability of equipment for adequate teacher demonstration and student use,

d. Any other conditions which affect the health, safety, and supervision of the pupils.

B.4. is a class size provision and is illegal.

5. Overload

a. Where overload is necessary, teachers shall receive additional salary which shall be calculated by dividing the teacher's salary by the maximum class and multiplying by the number of overload students.

b. Any overload in excess of five (5) students shall be double the normal overload formula as determined above.

c. The determination of the actual workload shall be made on the third day of pupil attendance. Any overload shall be calculated and added to a teacher's salary immediately. Any additional overload thereafter shall be added to salary as of the date of the overload.

B.5. It is likely that PERC will find a clause such as this, which does not prohibit increases in class size but provides premium pay for teaching in such a class, to be legal. Few boards have agreed to such clauses.

6. Lunch Periods

a. Grade Level and Other

Teachers shall have a daily duty-free lunch period of at least the following lengths:

1. Elementary School - _____
2. Junior High School - _____
3. Senior High School - _____
4. Other - _____

b. Leaving the Building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

B.6.b. Some boards may desire to require notice of a teacher leaving.

7. Preparation Time

a. Grade Level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

1. Elementary School - _____
2. Junior High School - _____
3. Senior High School - _____
4. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

B.7.a. must be considered in light of the specific requirements and duties of each classification in the unit. Note that 7.a.4. would grant preparation time to nurses, librarians, and part-time employees covered by this contract. It may be unreasonable to provide these people with preparation time in light of their duties.

b. Extra Pay and/or Released Time

1. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him/her of his/her preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of ( ) periods which shall entitle him to ( ) additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

2. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his/her annual salary in addition to his/her regular salary.

The second sentence is an illegal topic for negotiations, because it concerns the hiring process. **Elizabeth**, PERC No. 80-10. The rest of the clause is legal. Very few boards have agreed to pay extra money to teachers who must teach combined classes because of a lack of substitutes.

c. Exceptions

Exceptions to the provisions of Sections a and b above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance, if possible.

B.7.c. It is likely that any arbitration award involving this clause that prohibited an employer from acting in an emergency according to the employer's definition of "emergency" would be illegal.

d. Extra-curricular Activities

1. Approved Activities

The board and the Association agree that the extra-curricular activities listed in Schedule E.

This clause should conclude "...are educationally worthwhile." It should be rejected as illegal, and because it opens the door for an arbitrator to forbid the termination of an extra-curricular activity.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

3. Staggered Schedule

In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

The decision to assign particular teachers to extra-curricular positions, and the workload increase that necessarily accompanies that decision, is not negotiable. **Ramapo-Indian Hills**, PERC No. 80-9. While it is obviously preferable to have voluntary coverage of these activities, circumstances may not allow it for all activities.

e. Field Trips

Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school-sponsored activity. For participation in field trips which extend beyond the teachers' in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

B.7.e. The first sentence concerns an illegal topic for negotiations. See the commentary above.

8. Meetings

a. Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings ( ) day(s) each month. Such meetings shall begin no later than ( ) minutes after the student dismissal time and shall run for no more than ( ) minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

b. Meetings which take place after the regular in-school workday and which require attendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

B.8.a., b. and e. limit the district's ability to schedule after school meetings for faculty. Before agreeing to such a clause, the board must be sure that the administration finds it practical. The clause should be limited to faculty meetings so as not to limit the board's right to schedule parent-teacher meetings or to assign teachers to special assignments and programs presented by the students.

c. An association representative may speak to the teachers during any meeting referred to in paragraph 1 above for at least ( ) minutes on the request of the representative.

d. The notice of and agenda for any meeting shall be given to the teachers involved at least ( ) days prior to the meeting, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

e. Teachers may be required to attend no more than ( ) evening assignments or meetings each school year without additional compensation.

B.8.c. It is legally questionable, and impractical, for the union to have a right to speak at all meetings which teachers are required to attend.

C. Department Heads

Department heads shall not be assigned more than ( ) student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

C. Department heads who are truly supervisors within the meaning of the PERC law should not be included in the teachers' assignment. See **PERC**, pp. 8-10.

D. Instructional Planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluations shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

E. A teaching period shall be defined as any pupil contact situation.

D. The first and second sentences are illegal, and agreement to them would severely limit an administrator's ability to monitor the achievement of educational goals in a building and to evaluate the performance of staff. **Fairview**, PERC No. 81-19. The obligation to develop procedures for providing lessons for substitutes in consultation with the Liaison Committee is legal only as long as it doesn't interfere in the principal's access to the lesson plans or his ability to provide them to substitutes. (The Liaison Committee article is actually Article XVIII.)

F. Any violations of the above procedures which cause inconvenience, additional workload or impact on working conditions shall be remedied immediately.

F. The ambiguity of this clause is enough to warrant its rejection. The reference to "additional workload" may be illegal as it relates to increases in class size.

Article VIII, *Nonteaching Duties*

A. Intent

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

Paragraph A. of Article VIII is a goal statement and should not be agreed to.

B. Application

1. List of nonteaching duties

Option (a)

Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of $ per period.

a. Cafeteria duty
b. Supervision of playgrounds
c. Supervision of bus loading
d. Supervision of bus unloading
e. Milk distribution

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.

a. Collecting money from students
b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
c. Correcting standardized tests used at the direction of the Board or the Administration.

PERC has hedged on whether the decision to assign non-teaching supervisory duties to teachers is negotiable. See **Negotiations News**, Nov./Dec. 1979, and **Fairview**, above. If a clause is written in terms of workload, it will be considered negotiable; if written as a blanket prohibition on the assignment of teachers to supervisory responsibilities, it may be non-negotiable. It is lawful, however, to agree to premium pay for such duties. Very few boards have done so, however, because it is illogical to pay someone extra to do work which he is presently doing as part of the traditional responsibilities of the position.

2. Secretarial assistance

By the beginning of the 19 - school year, the Board shall hire one (1) secretary for every ( ) teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

The decision to hire secretaries, or any other personnel, is not negotiable.

3. Noneducational activities

Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the class.

The decision as to whether funds will be collected from students, and what those funds will be used for, is not a legal topic for negotiations. Some of the restrictions in this clause may be sound educational/administrative policy, and may already be the practice in your district; they are not, however, suitable topics for labor contracts. Few, if any, boards have agreed to such a clause.

4. Transporting students

a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of (¢) cents per mile for the use of his own automobile.

b. By the beginning of the 19 - school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

Article IX. ***Teacher Employment***

A. Certification

1. Standard certificates

The Board agrees to hire only fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

Article IX brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

In **Ridgefield Park**, the Court relied heavily on C.212, the T & E law, which very specifically lists hiring as a policymaking function to be carried out with a "maximum of citizen participation." As such, agreements which limit boards in setting criteria for hiring (within the framework of existing law) are illegal.

2. Notification
Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 except as it is needed to ascertain whether the employee was placed on the proper salary level.

B. No Reduction
The Board agrees there shall be no reduction in the number of teachers from the previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

(Notice to Association Leaders: If reduction in force is a threat in your district, the UniServ office will supply sample language for your contract.)

B. This is an illegal subject of negotiations.

C. Non-Certificated Personnel
The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

C. The assignment of personnel, as long as it is carried out consistent with existing law, is major educational policy and, therefore, an illegal subject. The second sentence appears to refer to using employees outside of the bargaining unit (see Chapter 2, "Representation," in PERC) to do work normally assigned to members of the unit. This is a required topic for negotiations according to PERC. **Rutgers**, PERC No. 79-72.

D. Placement on Salary Schedule

1. Adjustment to salary schedule
Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience
Credit up to the ( ) step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed ( ) years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed ( ) years for Peace Corps, VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

Paragraphs D.2. and E.: **N.J.S.A.** 18A:29-9 prescribes that initial placement on the salary schedule "shall be at such point as may be agreed upon." PERC has ruled this to be a required topic. **Dennis Twp.**, PERC No. 80-157. It is recommended that boards retain the prerogative of such placement. Note, however, that **N.J.S.A.** 18A:29-11 requires a board to give credit on the salary guide for military service, with a maximum of four years credit. This has been interpreted to apply to longevity payments also, in certain limited circumstances. **Wall Township**, 149 **NJ Super** 126 (1977).

D.2. requires that the board grant credit for outside volunteer employment. This clause might result in the non-hiring of teaching personnel with this background because of the additional cost to districts.

E. Returning to the District
A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

F. Previous Sick Leave Accumulation
Previously accumulated unused leave days shall be restored to all returning teachers.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

G. Notification of Contract and Salary
Teachers shall be notified of their contract and salary status for the ensuing year no later than ————————.

Agreement as to dates involved in Article XI, paragraph G., should be made only after careful consultation with the superintendent.

Early notification dates have caused extreme difficulties in many districts.

Article X. *Salaries*

A. Salary Schedule
The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Increment
Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordance with the following:

1. Subject to ARTICLE IV, Section C.
2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation".
3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.
4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.
5. Any action by the Board to withhold an increment or any part thereof shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.
6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

Paragraph B. of this article restricts the board's authority to withhold a teacher's salary increment. In **Bernards Township**, the Supreme Court held such a restriction to be illegal (see "The Scope of Negotiations," earlier). The only aspects of withholding of an increment that may be negotiated are procedural matters that are consistent with **N.J.S.A.** 18A:29-14, such as notice to the teacher of the intent to withhold the increment, and the right to grieve the board's decision to **advisory arbitration.** (The article on teacher evaluation is actually ARTICLE XIV.)

C. Method of Payment

1. Twelve (12) month
Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

2. Ten (10) month
Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan
Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions
When a pay day falls on or during a school holiday, vacation or week-end, teachers shall receive their pay checks on the last previous working day.

5. Final pay
Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Agreements with respect to methods of payment must meet your own administrative needs and be consistent with legal requirements.

Article XI, *Teacher Work Stations*

A. Procedure
1. All teachers shall be given written notice of their salary schedules, class and/or subject stations, building and room stations for the forthcoming year not later than . A list of said schedules and stations shall be simultaneously sent to the Association.

Notice provisions related to teacher assignment are required subjects for negotiations. Any aspect of this article, however, which infringes on the right of boards to make education

2. The superintendent shall notify all newly-appointed personnel of their specific positions within that subject area and/or grade level for which the Board has appointed them. The Superintendent shall give notice of work stations to new teachers as soon as practicable, and except in cases of emergency, not later than

3. In the event that changes in such schedules, class and/or subject, building or room stations are proposed after , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association.

related decisions regarding assignments is illegal. Most of this article was subject to PERC analysis in **Fairview Board of Education**, PERC No. 80-18.

Paragraph A.1., 2, and 3. concern required topics for negotiations, because they are strictly procedural in nature. The dates on which notice can reasonably be given is a judgment for your district's administrators making these assignments.

B. Teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

This is an illegal topic because it concerns the criteria for assignment.

C. 1. Schedules of teachers who travel to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Teachers who may be required to use their own automobiles in the performance of their duties and/or teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of ( ) cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of ( ) cents per mile.

C.1. The first sentence of this clause is illegal because it imposes a limitation upon the Board's ability to make up teacher schedules. The second sentence is procedural and negotiable.

D. Procedure for Change in Teacher Work Stations

1. The superintendent shall deliver to the association and post in all school buildings a list of the known vacancies as they occur.

2. Teachers who desire a change in grade and/or subject station or who desire to change to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be placed and the school or schools to which he/she desires to be placed, in order of preference. Such requests for change in the work station for the following year shall be submitted no later than

3. As soon as practicable, and no later than , the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers whose work station has been changed, including the nature of the change.

D.1.,2.,3., and 6. are procedural and negotiable. If agreed to, be certain any dates included are administratively feasible.

4. In the determination of requests for a change in work station, the wishes of the individual teacher shall be honored to the extent that the change does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for change has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described above, unless there is no available position or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by lottery.

5. No vacancy shall be filled by means of involuntary change in work station if there is a qualified volunteer available to fill said position.

6. Notice of a voluntary change in work station will be given to teachers as soon as practicable, and except in cases of emergency not later than

D.4. and 5. are illegal because they concern the criteria for selection and assignment of personnel.

7. When an involuntary change in work station is necessary, a teacher's area of competence, major or minor field of study, length of service in the School District, length of service in the particular school building, and other relevant factors including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be selected for a change in work station.

D.7. also concerns criteria for assignment and is illegal.

8. An involuntary change in work station shall be made only after a meeting between the teacher involved and the [insert appropriate title], at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the change at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

D.8. According to PERC, the right to a meeting to discuss a transfer prior to the scheduled date of the transfer is a procedural matter and is negotiable. However, "the existence of such a procedure cannot prohibit effectuation of an assignment until after such a meeting takes place." Failure to comply with a prior meeting clause may not authorize rescission of an assignment. **East Orange**, PERC No. 81-25. In other words, the clause is negotiable, but apparently unenforceable. Such clauses don't help either party. A better approach would be to place such a clause into administrative regulation and to exclude it from arbitration.

9. A list of open positions in the school district shall be made available to all teachers being involuntarily changed. Such teachers may request the work stations in order of preference, to which they desire to be changed. All such teachers shall be given adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily changed from their present positions shall have preference over those seeking voluntary change in regard to choice among those positions which are vacant. A teacher being involuntarily changed shall be placed only in an equivalent position — i.e., one which among other things does not involve reduction in rank or in total compensation.

D.9. The first two sentences in this paragraph are procedural and negotiable, and may be acceptable to most boards. The third sentence is likewise negotiable, but may cause too many administrative problems regarding the length and scheduling of such visits to be acceptable in your district.

The fourth sentence gives preference to involuntarily transferred teachers in filling vacancies. Such preference is illegal because it interferes in the assignment of personnel by management.

The last sentence is legal in some aspects, but at least potentially illegal in others. It is legal to the extent that it concerns matters that are themselves negotiable, e.g. protection against decreased compensation. It would be illegal if it were interpreted to concern non-negotiable matters; "equivalent position" cannot refer to class size, teaching assignment, or other such items.

10. Any teacher whose work station is changed shall be provided assistance in the following manner:

a. In cases of changes of work station during the work year, the teacher shall be provided one work week free of pupil contact in order to prepare for the new work station.

b. In cases of changes in work station determined during the summer vacation period, or changes scheduled during the work year effective for the next work year, the teacher shall have the option to work any one week during the summer vacation period. The teacher shall be compensated at the rate of pay appropriate to the new work year.

c. In the event a teacher takes courses related to the change in work station, the board shall pay the full cost of tuition and all related personal expenses.

D.10 has not been considered by PERC. It appears to be negotiable, relating only to paid leaves, extra compensation, and tuition reimbursement. 10a. and b., however, will be found by most boards to be unnecessary and therefore unacceptable.

Article XII, *Promotions*

A. Positions Included

Promotional positions are defined as follows:

Positions paying a salary differential and/or positions on the administrator-supervisory

If the board agrees to a notification procedure for promotions, the time limits agreed upon must be feasible.

levels of responsibility including but not limited to positions as (list by title)
All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions in programs funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new application should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

B. Criteria for Notice

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reasons therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

B. The third sentence is an illegal subject for negotiations, because it would interfere in the board's right to determine the qualifications for promotion. **Newark**, PERC No. 80-2.

C. Two Optional Plans (Select One)

Option (a)

All qualified teachers shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

C. In Option (a) the first sentence and sentences four through seven are procedural issues normally held by PERC to be required topics.

The second and third sentences go to the criteria for promotion and are thus illegal topics.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.

2. All promotional positions shall be filled according to the following procedures:

   a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of ( ) persons, ( ) appointed by the superintendent and ( ) appointed by the presi-

In Option (b), only the first sentence of the first paragraph and the last sentence of the last paragraph are procedural and negotiable. The rest of this article deals with the criteria for promotion and seriously restricts a board's discretion in this area.

For a detailed analysis by PERC on a similar clause, see **Newark**, PERC No. 80-2.

dent of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.

b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.

c. All applicants shall be placed on a ranked list according to their total ratings.

d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.

3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

Article XIII, *Accredited Evening High School - Summer School - Home Teaching and Federal Programs*

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

The first question concerning this article is: are evening high school and summer school program personnel included in your bargaining unit? If they are not, there should be no negotiations over the terms and conditions of employment for those positions.

Even if certain positions are not included in the bargaining unit, requirements for notification of position openings is a required subject (no concessions must be made in this area). The dates contained in A. may be too early in some districts.

B. Criteria

In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding ( ) years. Teachers employed in the School District shall have priority to such assignments before appointment to applicants from outside the district.

B. The criteria for selection of employees is not negotiable.

C. Salary

Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

D. Coverage by Master Agreement

All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable .

Again, C. and D. relate to terms and conditions of employment, but should not be a subject of negotiations unless these positions are included in the bargaining unit.

Article XIV, *Teacher Evaluation*

Two major decisions by PERC provide considerable guidance on the legality of the Sample Agreement language. These cases should be carefully reviewed before negotiating on this topic. **Bethlehem Board of Education**, PERC No. 80-5, and **Fairview Board of Education**, PERC No. 80-18.

Because of the State Board's rules on tenured teacher evaluation, there

is a different range of negotiable items for tenured teachers as compared to non-tenured teachers. In either case, all educational policy matters, such as the criteria for evaluation and the selection of the evaluator, are non-negotiable. For tenured teachers there are substantial limits on the kinds of evaluation procedures that can be negotiated, because districts must conform to the extensive State Board regulations. The legal requirements for the evaluation of non-tenured teachers are less comprehensive, so there is more room for negotiations in this area.

Equally important to knowing the law on this topic is to know what is practical and effective in teacher evaluation. The opinions of your administrative staff are invaluable here.

A. Evaluation Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish an Evaluation Committee consisting of ( ) members, and ( ) members appointed by the Board, and ( ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria for the evaluation of teachers.

3. Report Date

The recommendations shall be submitted for adoption to the Board and the Association no later than December 15, 19 .

Because the criteria for evaluation is an illegal subject, the creation of an employee committee that has anything more than advisory authority is non-negotiable. The committee should not be able to obstruct the board's ability to adopt or change evaluation criteria. While the board should encourage wide professional involvement in evaluation criteria development, that involvement may not exclude the public or individual teachers from having input.

B. Procedure

1. Frequency

a. Teachers shall be observed through classroom visitation by a certified supervisor at least ( ) times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate supervisor for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction. Each observation shall consist of at least a full period in the junior/senior high school or a complete lesson in the elementary school(s).

B.1.a. is procedural and negotiable. The minimum duration of an observation for a non-tenured teacher is set out in N.J.A.C. 6:3-1.19.

b. Teachers shall be informed of classroom visitation at least five (5) work days in advance of said visitation.

PERC has held advanced notice of evaluations to directly affect the substantive aspects of the evaluation process and therefore to be illegal topics for negotiations.

c. Classroom visitations/observation shall not occur on the same day, nor shall any observation occur prior to the previous evaluation conference. In no case should any observation occur within ten (10) school days of the previous evaluation. All visitations/observations shall occur in the same work year.

B.1.c. This is procedural and negotiable.

2. Non-tenured Review

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

B.2. PERC has ruled, in keeping with various court decisions, that the decision to renew or not renew a non-tenured teacher is a non-negotiable management right. Hence this clause is illegal. (The Fair Dismissal Prcedure is actually found at ARTICLE XV of the Sample Agreement.)

3. Open Evaluation

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

B.3. is negotiable.

4. Evaluation by Certificated Supervisors

a. Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction. By September 1 of each school year, each teacher shall be given the name of the person who will evaluate his/her classroom performance.

b. Evaluators shall be regular full-time employees of the school district and shall be certified in the instructional areas they are evaluating.

B.4.a. The first sentence limits the board in selecting its evaluators, and is illegal. The second sentence, providing that teachers be notified of their evaluator's name, is procedural and negotiable. B.4.b. is illegal because it restricts the board's right to hire and assign employees.

5. Copies of Evaluations

A teacher shall be given a copy of any class visit evaluation report prepared by his/her evaluator at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

B.5. The first and third sentences are legally negotiable. The second sentence is negotiable for non-tenured teachers, and mandated for tenured teachers under the State Board regulations.

6. Conferences

Evaluation conferences as described in Section B.1 shall occur within fifteen (15) days of the observation. The conference shall be held within the school day without loss of benefit to the teacher.

B.6. is negotiable.

7. Right to Representation

A teacher shall have the right to representation in an evaluation conference.

B.7. is negotiable. Note that there is no right to such representation without a negotiated agreement so stating. A school board must consider the overall effect on the evaluation process of having a union representative present during an evaluation conference. Most administrators would find the presence of a union representative at an evaluation conference to be unnecessary and counterproductive.

8. Standardized Tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

B.8. is illegal as interference in the selection of evaluation criteria, and as contrary to the State Board regulations.

9. Communication

Prior to any evaluation report the immediate supervisor of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 10 below and the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

B.9. is negotiable insofar as paragraph 10 is legal. The reference in the last two lines should be to ARTICLE XXV Section B. of the Sample Agree-

10. Reports

Evaluation reports shall be presented to each teacher in accordance with the following procedures:

a. Such reports shall be issued in the name of the evaluator. The evaluator is the person who observed the teaching performance as required in Section B. of this ARTICLE.

b. Such reports shall be addressed to the teacher.

c. Such reports shall be written in narrative form and shall include, when pertinent:

(1) Strengths of the teacher as evidenced during the period since the previous report.

(2) Areas of improvement needed by the teacher as evidenced during the period since the previous report. If these areas of improvement are not repeated in subsequent reports said areas shall be considered remedied.

(3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.

(4) Upon request the evaluator shall demonstrate the proper method(s) to correct any areas of improvement.

11. Final Evaluation

The annual summary evaluation of a teacher shall be determined by a compilation of the required evaluations as provided in this ARTICLE.

C. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him/her during such review. At least once every ( ) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the Superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

2. Derogatory Material

No material derogatory to a teacher's conduct, service, character or personality or any material which could have an adverse effect on a teacher's status shall be placed in his/her personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the Superintendent or his designee and attached to the file copy.

No Separate File

Although the Board agrees to protect the confidentiality of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

D. Termination of Employment

Final evaluation of a teacher upon termination of his/her employment shall be concluded prior to any recommendation for severance and no documents and/or other material shall be placed in his/her personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

ment, concerning an employee's right to counseling by his immediate superior.

B.10. concerns the content of the evaluation report and is for the most part preempted by the State Board rules as they apply to tenured teachers. Only B.10.b., mandating that reports be addressed to the teacher, is a negotiable addition to tenured teacher evaluation procedures.

B.10.c. outlines the specific contents of the evaluation report. PERC has specifically ruled that B.10.c.(4) is not negotiable because it "relates to the evaluation." Following this logic it appears that all of B.10.c. is non-negotiable for non-tenured employees because it involves the substantive content of the report rather than the procedures involved, and therefore limits managerial prerogatives.

B.11, according to PERC, is not negotiable because it concerns the content of the report.

Paragraph C., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

Paragraph D. was ruled non-negotiable by PERC because it limited what could be placed in a teacher's personnel file.

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of non-tenured teachers set forth in the **Donaldson** case.

These rules do not alter the basic relationship between a board and its non-tenured teachers. The nature of a non-tenured teacher's contract of employment with a school board is one for personal services with a commencement and a termination date. When the terminal date has been reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short, no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of ( ) members, ( ) members appointed by the Board and ( ) members appointed by the Association.

A. A committee that is merely advisory to the board on this topic, and which neither binds the board nor obstructs its right to act in this area, is legally negotiable. **Commercial Township**, PERC No. 80-20. This is, however, the responsibility of the administration and the board; such committees are rarely created through the negotiations process.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

A.4. is a term and condition of employment.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher continuously employed since the preceding September 30 either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or

b. A written notice that such employment shall not be offered.

B.1. is a restatement of law and is unnecessary.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

B.2. is a paraphrase of law and changes the board's legal obligations. 18A:27-3.2 requires that the board supply a written statement of reasons within **thirty** days, not the five listed in this sample clause. For some reason, this clause attempts to decrease teachers' statutory rights to request reasons from the present **fifteen** days to five.

3. Hearing
Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

B.3. The Administrative Code very specifically requires an **informal appearance**, not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private.

4. Board determination
The Board shall issue its written determination as to the employment or nonemployment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within **three** days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in Administrative Code), the affected teacher seeks an appearance which is held on July 24th, with a written determination issued on July 27th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before late July.

5. Appeal to grievance procedure
If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be entitled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

B.5. As stated above, PERC has held that arbitrators have no authority to review a board's decision not to renew a non-tenured teacher. Arbitrators can hear grievances over procedural violations under this article, but, even if a procedural violation is found, the arbitrator is without any power to order reinstatement. **Fair-Lawn**, App. Div., June 2, 1980, and **Fairview**, PERC No. 80-18.

C. Failure to Comply
Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

D. Notification of Intention to Return
If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

C.,D., and E. are restatements of the law. N.J.S.A. 18A:27-11 and 27-12.

E. Termination of Employment
Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs

E. The rights of non-tenured teachers to a statement of reasons

2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

and an informal appearance before the board are negotiable as long as they comply with the legal minimums. See **Sachs**, 76 S.L.D. 170.

Article XVI, *Complaint Procedure*

A. Procedural Requirement

Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

B. Meeting with Principal or Immediate Superior

The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation

The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

D. Procedure

Step 1.

In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.

Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.

Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.

Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

Step 5.

If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.

After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.

Any complaint unresolved under Step 6, may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source for which the teacher grieves for relief and remedy against a potentially damaging influence which the complaint may have against the teacher's evaluation report.

Very few boards have such a complaint procedure in their agreement.

It would appear that Paragraph A., B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

Article XVII, *Teacher Facilities*

A. Listing of Facilities

By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;

All of the items demanded in Paragraph A. must be questioned in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Any item involving the bulding or improvement or the use of space within the building should hinge first upon the requirements for classrooms. The board should reject such specific details as are requested here.

7. A communication system so that teachers can communicate with the main building office from their classrooms;

8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the student's rest rooms;

9. A separate, private dining area for the exclusive use of the teachers;

10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;

11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;

12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;

13. Adequate chalkboard space in every classroom;

14. A complete and unabridged dictionary in every classroom;

15. Adequate books, paper, pencils, pens, chalk, erasers and other such material required in daily teaching responsibility.

B. Special Clothing

By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

Paragraph B. must be considered strictly as a cost item.

C. Work Room and Office

By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

D. Answering Service

The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines

Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

The Teacher-Administration Liaison Committee clause is actually found in ARTICLE XVIII.

F. Keys

In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and, upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

G. Student Transportation

By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

This is not a term and condition of employment and, therefore, an illegal subject.

Article XVIII, *Teacher-Administration Liaison*

A. Building Level Faculty Council

1. Organization

The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than one (1) member for every ( ) teachers in the school building, but shall in no event have less than ( ) members.

A recent PERC decision held that a Board-Teacher Liaison Committee proposal was a required topic for negotiations. This committee would have a majority of management representatives, would engage in discus-

64

2. Areas for Faculty Council consideration

Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

a. Administration of this Agreement;
b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
c. Revision and development of building policies and practices.

B. Meetings with Superintendent

The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement

Article XIX, *Instructional Council*

A. Organization

1. Purpose

An Instructional Council shall be established and shall meet not later than 19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organizational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership

The Council shall consist of ( ) representatives appointed by the superintendent and ( ) representatives appointed by the Association.

3. Committees

The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions

The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

5. Additional members

Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure

The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings

The Council shall meet at least once each month.

8. Information

The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V Section A of this Agreement.

B. Reports

1. Board and Association action

The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

sions, not negotiations, and would meet at the agreement of the parties. The clause specifically guaranteed that the existence of the committee would not preclude the board from exercising any of its legal rights. With these caveats, PERC ruled that such a liaison committee, even though it would discuss only non-negotiable matters, was itself a required topic for negotiations. **Commercial Twp.**, PERC No. 80-20.

It is likely, therefore, that the establishment of monthly meetings between the Faculty Council and the school administration to discuss non-negotiable matters is legally negotiable, as a non-binding forum for the expression of teacher concerns over non-negotiable matters.

It is not clear whether PERC's analysis regarding a Board-Teacher Liaison Committee will be applied to Instructional Councils. The language in the Sample Agreement is much broader than that in the PERC case, and potentially much more restrictive.

Boards receiving this demand should consider establishing such a committee outside of the labor agreement, at the building and/or district level, for on-going consultation on non-negotiable matters.

2. Minority reports
Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget
As of September 1, 19 , the Board shall provide ($) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay
Teachers who serve on the Instructional Council or any sub-committee organized by it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Released time
In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its sub-committees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

a. Elementary Schools – ( ) periods per day
b. Junior High Schools – ( ) periods per day
c. Senior High Schools – ( ) periods per day
d. Other – ( ) periods per day

E. Clerical Assistance
Adequate secretarial and clerical assistance shall be provided for the Council.

Article XX, *Sick Leave*

A. Accumulative
As of September 1, 19 , all teachers employed shall be entitled to ( ) sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent concession by the union.

B. Transfer from Other Districts
As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in addition to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of ( ) days or such lesser amount as may have been accumulated in the former district.
2. For each subsequent year of employment in the School District an additional ( ) days until all of the days accumulated in the former district have been credited.
3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so used shall be accumulative for additional leave thereafter as may be needed.
4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

B.3. The transfer of sick leave credit is not required by law and has been negotiated into very few contracts.

C. Nonaccumulative
Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.)

C. The State Board of Education, consistent with PERC and Appellate Court cases, recently ruled that automatic grants of sick leave beyond accumulated days were prohibited by N.J.S.A. 18A:30-6. **Ramsey Board of Education.** Boards must retain discretion to act on requests for extended sick leave on an individual case basis.

D. Summer School
As of September 1, 19 , teachers employed in the summer school program shall be granted ( ) nonaccumulative sick leave days.

Paragraph D. covers summer school jobs which are not in the bargaining unit. For this reason, this clause should be rejected.

E. Notification of Accumulation
Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

F. Retirement
Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

F. Payment for unused accumulated sick leave is being negotiated in more districts each year. The cost of these clauses varies tremendously, however, depending upon the rate of pay per accumulated day, the minimum years of service for eligibility, and the maximum allowable payment per employee. There is no evidence that such a clause discourages sick leave abuse. Such clauses are merely reward systems for people who would not have used their sick leave anyway. See **Negotiations News**, May/June 1979, for a discussion of causes and curbs regarding excessive teacher absenteeism.

Any agreement on such a clause should provide for a fixed dollar per day payment, rather than keeping the payment to a percent of daily salary. This avoids an automatic increase in the cost of the benefit each year; every increase in the per day payment must be achieved through new bargaining.

Article XXI, *Temporary Leaves of Absence*

A. Types of Leave
As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal
( ) days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least ( ) day(s) before taking such leave (except in the case of emergencies) and the applicant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

An effective personal leave clause should contain the following restrictions:

1. the reason for the requested leave should be stated.

2. personal leave cannot be taken on consecutive days, nor before or after a holiday, weekend, or sick day.

3. the superintendent has the discretion to deny the request for good reason, e.g., unavailability of substitutes or too many requests for a particular day.

For a detailed discussion, see **Negotiations 80**, p. 13.

2. Religious
Up to ( ) days per school year for observance of religious holidays, where said observance prevents the teacher from working on said days.

A.2. PERC has held that contract clauses granting paid leave for religious holidays, which is not deducted from personal or vacation days equally available to non-religious employees, is unconstitutional. **Hunterdon Central High School Board of Education**, PERC No. 80-4, aff'd, **App. Div.**, June 19, 1980. Permitting employees to use unspecified personal or vacation leave for religious observance, on the other hand, is legally negotiable.

3. School visitation

Up to ( ) days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to ( ) days for ( ) representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

6. Legal

Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death

Up to ( ) days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to ( ) days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school

Up to a total of ( ) days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

9. Marriage and honeymoon

Up to ( ) days for the purpose of marriage and honeymoon or up to ( ) days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military

Time necessary for persons called into temporary active duty of any unit of the U. S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause

Other leaves of absence with pay may be granted by the Board for good reason.

B. In Addition to Sick Leave

Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention

Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

Paragraphs A.3. to A.9. must be analyzed locally regarding their cost and effect on administrative and educational efficiency. A.6. should, at the least, not include legal appearances where the board and teacher are adversaries, e.g. tenure hearings and PERC hearings.

A.11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's action to help employees in a given situation can force the employer to grant the same benefit in all similar cases.

C. First, Chapter 123 as noted earlier, prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area has been issued, it is very possible that any agreement to this clause,or any payment under it, is a violation of law.

Practically, paragraph C. is unacceptable even if legal. There is no limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. No boards, to our knowledge, have agreed to such a clause.

In consideration of the extended leaves of absence demanded in Article XXIII, it should be noted that most of these leaves are for periods of time without pay. The board must bear in mind that future demands in this area will probably be for a certain percentage of pay for these leaves. Thus, while such leaves might not appear to be a cost item at this time, they might become so in the future.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise.

Article XXIII, *Extended Leaves of Absence*

A. Association

The Board agrees that up to ( ) teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to ( ) year(s) for the purpose of engaging in activities of the Association or its affiliates.

B. International and Federal Programs

A leave of absence without pay of up to ( ) years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.

C. Outside Teaching

A teacher on tenure shall be granted a leave of absence without pay for up to ( ) years to teach in an accredited college or university, private school or other public school district.

D. Military

Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

E. Maternity

1. Natural Birth

The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

(a) Maternity leave shall commence and terminate, on the date requested by the teacher.

(b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to use all or any part of her accumulated sick leave during period of such absence and receive full pay and benefits for the same.

(c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.

(d) No teacher shall be required to leave work because of pregnancy at any specific time prior to expected childbirth nor be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse of specific duration between childbirth and the desired date of return.

(e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.

(f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et seq. The Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

For a detailed discussion of maternity, disability and childcare leave clauses, see "Maternity, Pregnancy Disability, and Childcare Leaves: An Analysis with Recommendations," earlier in this book.

3 **Adoption**
Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

E.3. Adoption differs from pregnancy-related disability and sickness. It is akin to child-rearing leave. There is no obligation to agree to adoption leave. This clause is discriminatory in that it applies only to female teachers.

F. Illness in Family
A leave of absence without pay of up to ( ) year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

G. Political
The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

H. Good Cause
Other leaves of absence without pay may be granted by the Board for good reason.

I. Return from Leave

1. **Salary**

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

I.1. There is no requirement that credit for teaching be given during periods of extended leave without pay. It is rarely done unless the teacher works for the district for over 90 days in the academic year of the leave.

2. **Benefits**
All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals
All extensions or renewals of leaves shall be applied for and granted in writing.

Article XXIV, *Sabbatical Leaves*

A. Purpose
A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

A. This language will result in teachers receiving paid sabbatical leaves to do nothing of value to the district, e.g., irrelevant travel, or study for a career outside of teaching. Boards should insist that the primary purpose of any sabbatical is to improve the teacher's value to the district upon return.

B. Conditions
Sabbatical leave shall be granted, subject to the following conditions:

B. The word "shall" seems to remove any discretion from the board.

1. **Percentage of teachers**
If there are sufficient qualified applicants, sabbatical leaves shall be granted to a mimimum of (%) percent of teachers at any one time.

B.1. By granting only a minimum there is no way to predict the maximum number of teachers receiving sabbaticals. This is too open-ended for most boards. Besides, what will happen if the minimum number of teachers don't apply?

2. **Requests**
Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintendent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

B.2. The January application date may be too late for proper budgeting by the board. The February date may

not give the board enough time to evaluate the applications.

3. Minimum time to qualify
The teacher has completed at least seven (7) full school years of service in the School District.

4. Pay
A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return
Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

B.3.,4. and 5. are standard, except that most clauses don't permit sabbaticals for "travel or other reason" unless related to the teacher's responsibilities in the district. Most districts require that teachers who receive sabbatical leaves return to the district for one or two years following the sabbatical, or reimburse to the board the salary received during the sabbatical leave. See **Negotiations 80**, pp. 9-11, for more detail.

Article XXV, *Professional Development and Educational Improvement*

The question of the board agreeing to make certain payments in connection with this article is an appropriate subject for collective negotiations under the law.

A. Purpose
In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

There is no need for A. Moreover, the second and fourth sentences are probably illegal in light of **Ridgefield Park**.

B. Assistance for Teachers
Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day, so should teachers.

C. Programs
The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training
To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement
a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshops, seminars, conferences, in-service training sessions or other such sessions. Within ( ) days after signing this Agreement, the superintendent and the president of the Association shall each appoint ( ) members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

If the committee under C.2. is entrusted with determinations of the value of various in-service and professional development courses on programs, this is probably an illegal subject.

3. In-service workshops, conferences, programs
a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

Ridgefield Park would seem to make the first sentence of C.3.a. an illegal topic, particularly if this is meant to prohibit the introduction of inservice topics which the administration, but not the union, deems appropriate. The balance of a. and all of b. relate to terms and conditions of employment.

4. Professional library

To expend up to ($) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

C.4. is not a required subject of bargaining.

Unlike four or five years ago, teacher unions show little or no interest in clauses like this.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint ( ) members to this Committee and they shall choose a chairman from among themselves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

C.5. This is not a term and condition of employment but is a major educational policy function and is, therefore, an illegal area.

6. Summer program for professional development

To appropriate ($) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

a. Teachers may apply for this program no later than . Applications shall be submitted to a Screening Committee consisting of ( ) members selected by the superintendent and ( ) members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate ($) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and innovative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association shall be established no later than October 1, 19 . Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed ($) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

C.8.a. is a general goal statement and should be rejected. It belongs in board policy, not in a labor contract.

With respect to any committee set up to review educational policy or programs, boards must be certain that input is not limited to the union. T & E requires broad participation by teaching staff members and, where appropriate, by the community. No contractual agreement should limit that participation.

C.4. through 8. are almost never contained in contracts.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation, and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

Article XXVI, *Supervision of Student Teachers*

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the

Consultation in the area of student teacher supervision seems desirable. Control of that program either by in-

improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript of college courses and grades to date, statements relative to his academic proficiency from not fewer than ( ) of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least ( ) weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request, a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent, or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the

dividual teachers or by the union does not. Almost no district in the State has negotiated on this topic.

The control over student teaching programs by the union through negotiated agreement is illegal. Certain provisions of this article do relate to teachers' terms and conditions of employment and are required subjects.

Given **Ridgefield Park**, it would appear that the following provisions are illegal: B.1., B.2., B.3., B.4., B.7., B.8., B.9.b., B.10., B.11., B.12.a. and b. and B.13. Those governing terms and conditions would seem to be: B.5., B.6., B.9.a. and B.12.c.

Some of the illegal matters are simply not terms and conditions of employment of the teacher (such as B.11., already covered by State law; it does not directly affect a teacher's working conditions). Others go to major educational policy-making (such as B.7.). Some of these may be sound administrative practice; they are not, however, appropriate topics for negotiations.

student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

Article XXVII, *Protection of Teachers, Students and Property*

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

The topic of employee safety is a required subject. Recent discussions of violence against teachers should spur interest in this subject area.

With respect to the remaining paragraphs in Article XXVII, Title 18A of the New Jersey law imposes certain specific requirements and liabilities on the board. It should be emphasized again that the attempt to paraphrase the law, sections of the law, or intentions of the law, should not be agreed to. If it is deemed necessary to discuss or to quote the law, it must be done verbatim. Due to this aspect of this particular demand, the board should, with its attorney, carefully consider this specific proposal. More specifically, the terms "unsafe or hazardous conditions which endanger health, safety or well being" is conspicuously vague. Does the lack of air conditioning endanger well being? It is important to note that grievances may arise from such a provision, and decisions flowing from such grievances may be beyond the ability of the board to adopt without the expenditure of vast sums of money.

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers, the following conditions shall be established and exist until rescinded by the same body:

1. Meetings

In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

B.1. This clause, to the extent it does not deal with **teachers'** safety and personal property, is non-negotiable. PERC has ruled that a public employer can refuse to meet or negotiate with employee representatives **during an emergency situation,** even though employees' terms and conditions were affected. **Camden,**PERC No. 80-3. The Faculty Council clause is actually found in ARTICLE XVIII.

2. Association representatives

Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous

3. Closings

The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

B.3. Other rulings, noted in the commentary accompanying ARTICLE XI, hold that the implementation of a management decision cannot be held up by a requirement to meet with employees or unions prior to the implementation. See **New Milford,** PERC No. 81-36.

4. Unauthorized visitors
During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

B.4. This is an illegal delegation of managerial authority to a labor union.

C. Reasonable Force
As specified in 18A:6-1, a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner
Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance
The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave
When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage
The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical
The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation
Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

E.1. through 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

F. Reporting Assaults

1. Principal or immediate superior
Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent
Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

F.2. Access to confidential student records is not a term and condition of employment and, therefore, is an illegal topic.

G. Nurse
A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII, Section A of this Agreement.

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. N.J.S.A. 18A:40-1 et seq. prescribes the board's duties with respect to scheduling school nurses.

Article XXVIII, *Maintenance of Classroom Control and Discipline*

A. Definition of Responsibilities
A definition of the duties and responsibilities of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be delegated to committees and it should not be negotiated.

the superintendent and presented to each teacher at the start of each school year.

B. Special Assistance
When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other specialist, he shall so inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students
When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within ( ) days after the conclusion of such consultation.

D. Student Behavior Committee
As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures
An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement
Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

The board may want to arrange for the use of a committee to provide suggestions and advice on this topic.

The Liaison Committee article is actually ARTICLE XVIII; the Instructional Council article is found at ARTICLE XIX.

Article XXIX, *Insurance Protection*

A. Full Health-Care Coverage
As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage
Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)
The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)
In addition to the above stated program, provision shall be made to provide the following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

The board might properly negotiate the amount of insurance for employees and the kind provided. But it is generally wiser for boards to avoid negotiating the actual carrier(s) of this insurance. The board might desire to place the proposal out for bids and negotiating an actual carrier would restrict this.

More and more boards are negotiating on the cost of a benefit, rather than the benefit itself. For example, a board may agree to pay $50 per employee toward a prescription drug insurance plan; employees pay the rest of the insurance premium. This approach has numerous benefits:

- it prevents the board's automatic assumption of increases in insurance costs;

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers

The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

- it makes employees aware that such benefits are substantial cost items;
- it may make the union interested in dropping a demand for a new insurance benefit;
- and, if the board agrees in subsequent negotiations to increase its share of the premium cost, it does so as a concession to the union, in exchange for which a concession should be obtained from the union.

D. Washington National Meetings

The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

Article XXX, *Personal and Academic Freedom*

A. Personal

The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship

Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

1. Controversial material

Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion

In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

C.1. has been ruled to be a non-negotiable topic. **New Milford,** PERC No. 81-36. PERC did not address the constitutional questions that were raised. It is clear, however, that the constitutional freedoms of public employees can and have been protected outside the confines of the negotiated agreement.

3. Censorship
Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

In June, 1978, PERC ruled that teachers had no right to use students as messengers for union notices to parents. The decision would seem to apply to classroom discussion of the district labor disputes which are initiated by the teacer.

Article XXXI, *Books and Other Instructional Materials and Supplies*

A. Purpose
The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs
Funds for instructional materials and supplies shall be increased by not less than ($) dollar(s) per pupil for kindergarten through sixth grade and by not less than ($) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction
($) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash
A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

a. Secondary schools – ($) dollars per teacher per month

b. Elementary schools – ($) dollars per teacher per month

A. Procedures for reimbursement for purchase of equipment and supplies are negotiable. But the decision as to how much money to make available for reimbursement, and what materials are needed to enable teachers to fulfill their responsibilities is not negotiable.

B. Review and Evaluation of Books and Materials

1. Procedure
An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

a. A separate committee shall be established to make recommendations for each subject area;
b. School-based teachers shall constitute a majority of each such committee;
c. A subject supervisor shall not be able to override the recommendations of such committee;
d. The recommendations of each such committee shall be published and distributed to all schools; and
e. The distinction between books adopted for system-wide use and those for which there is freedom for individual school and/or teacher choice shall clearly be defined.

B. It is not clear if PERC's ruling regarding Board-Teacher Liaison Committees will extend to such things as textbook selection committees. Certainly, B.1.c. is illegal; such committees cannot interfere whatsoever with management prerogatives.

2. Textbook Policy Committee
A Textbook Policy Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time
Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

C. Standards for Materials

1. Criteria
Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereo-

C.1. The criteria for textbook selection listed here may be excellent but, because this clause does not relate to

types, and to materials offensive to minority groups, as measured by the following criteria:

a. The suggestion, by omission or commission or by over- or under-emphasis, that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.

b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.

c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.

d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.

e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.

f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.

g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.

h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

a term and condition of employment, it is a prohibited subject for negotiations.

D. Testing

Achievement tests which are to be used by the School District for district-, school-, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

D. This is an illegal subject.

Article XXXII, *Deduction from Salary*

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233 N. J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

A. is basically a restatement of law.

B. Local, State and National Services

The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days' written notice to the Board and the appropriate association.

B. May be intended for PAC contributions and appears illegal, because it is outside the present statutory authority of boards.

Article XXXIII, *Miscellaneous Provisions*

A. Nondiscrimination

The Board agrees that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age or sexual orientation.

A. This paragraph is, for the most part, a paraphrase of law. It is a much better practice to quote the law verbatim than to paraphrase it. It is also advisable to prohibit arbitration over such legal matters, and to direct grievances over such matters to the appropriate legal forum.

B. Board Policy
This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the contract.

C. Savings Clause
Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

C. This paragraph is not a "savings clause" (see ARTICLE IV.B., **Statutory Savings Clause.**) Rather it is a clause which retains all possible benefits from any source. It is commonly called a "past practice" clause. This type of provision can be extremely detrimental to a board and should be avoided. If included in the agreement, the result would be to include by reference in the contract all pre-existing "rights" provided or presumed in statutes, policies, administrative decisions or even practices of individual administrators.

D. Separability
If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

D. This is a standard clause.

E. Compliance between Individual Contract and Master Agreement
Any individual contract or job description between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract or job description contains any language inconsistent with this Agreement, this Agreement shall be controlling.

This is a standard clause. The board has the authority to establish job descriptions unilaterally, but they must be in compliance with the terms of the negotiated agreement.

F. Printing Agreement
Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice
Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at
   (address)
2. If by Board, to Association at
   (address)

Article XXXIV, *Duration of Agreement*

A. Duration Period
This Agreement shall be effective as of **[Date of implementation]** and shall continue in effect until **[Date of expiration]** .

[NOTE – In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:
subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

If the contract is going to exist for a particular period of time, but certain specific items, i.e., salaries, are to be negotiated during the course of the duration of the remainder of the contract, it should be specifically so stated in a reopener clause. There should be no vagueness whatsoever

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B. Status of Incorporation

Option 1 [For Incorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

Option 2 [For Unincorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

Article , Representation Fee

A. Purpose of Fee

If an employee* does not become a member of the Association during any membership year (i.e., from September 1 to the following August 31), which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Association as majority representative.

*Use the appropriate term to designate all members included in the bargaining unit.

with respect to these matters. The Sample Agreement language on a reopener clause refers to "each annual **budget**," which is totally inappropriate. If it stated "over salary" or "over economic benefits" it would be more acceptable. October 1 is too early for salary negotiations to occur in most districts.

The first sentence suggests that, even if an agreement containing an agency shop provision were in effect for only a portion of the school year, a non-member employee would have to pay a representation fee for the entire school year.

In fact, use of the term "membership year", defined as September 1 to August 31, implies that a contract that is effective on July 1, 1981 and which contains an agency shop clause may be entitling the union to collect agency shop fees for the **previous school year**. Since the membership year extends to August 31, 1981, the contract with the agency shop clause covers that membership year "in part", and retroactive payment may be due.

To avoid this, boards should insist that representation fees be deducted **prospectively only**, beginning either with July 1 or September 1.

The second sentence describes the purpose of the fee, but also should

cite, in the interests of thoroughness, those excluded union activities for which fee payment is not required, i.e., partisan, political activities or causes or ideological positions only incidentally related to terms and conditions of employment, and all benefits available only to members of the majority representative.

B. Amount of Fee

1. Notification

Prior to the beginning of each membership year, the Association will notify the Board, in writing, of the amount of the regular membership dues, initiation fees and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.

Although the union appears to have the right under the law to establish the percentage, and thus the amount of the representation fee, the proposed language presumes that the amount of the fee will be 85% of regular union member dues, fees and assessments. Preferable language would be that the fee will not exceed 85% of that amount, since during the life of a multi-year contract, the amount of fee may, in fact, drop below 85%.

The contract should also state: "The Association will certify to the Board prior to the start of each membership year that the amount of the represenation fee to be assessed does not exceed 85% of dues, fees and assessments and does not include any amount of dues, fees and assessments that are expended 1) for partisan, political or ideological activities or causes that are only incidentally related to terms and conditions of employment or 2) applied toward the cost of benefits available only to members of the majority representative.

2. Legal Maximum

In order adequately to offset the per capita cost of services rendered by the Association as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the Association to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum presently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum, said increase to become effective as of the beginning of the Association membership year immediately following the effective date of the change.

This clause contains a contingency provision, which would change the maximum amount of representation fee payment from 85% to some higher figure. It is recommended that school boards not agree to this language because it is based upon an anticipated change in the law. At this point, it would be best to operate under the provisions of existing law, and not project beyond this point.

C. Deduction and Transmission of Fee

1. Notification

Once during each membership year covered in whole or in part by this agreement, the Association will submit to the Board a list of those employees who have not become members of the Association for the then current membership year. The Board will deduct from the salaries of such employees, (in accordance with paragraph 2 below), the full amount of the representation fee and promptly will transmit the amount so deducted to the Association.

C. 447, P.L. 1979, requires that no representation fee deduction can be made unless the majority representative first establishes a demand and return system. This system provides that a non-union member may appeal the amount of the representation fee assessed against him/her. The union must provide the non-member with a full and fair hearing, and has the burden of proof in justifying the

amount of the fee. Non-members who are dissatisfied with the outcome of their appeal at the local level may appeal further to a three-member Tripartite State Board. Language should be negotiated requiring the majority representative to provide evidence of the existence of this system to the public employer and to all non-union members, before any deductions are made.

School boards should consider negotiating an Indemnification (save-harmless) Clause to ensure that they are held blameless against most forms of financial liability that may arise out of, or by reason of, any action taken or not taken in conformance with this provision. School boards should consult their board attorney, professional negotiator, or the NJSBA for guidance on such language. See "Agency Shop Negotiations", earlier in this book.

2. Payroll Deduction Schedule

The Board will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership year in question. The deductions will begin with the first paycheck paid;
(a) 10 days after receipt of the aforesaid list by the Board; or
(b) 30 days after the employee begins his or her employment in a bargaining unit position, unless the employee previously served in a bargaining unit position and continued in the employ of the Board in a non-bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid 10 days after the resumption of the employee's employment in a bargaining unit position, whichever is later.

The law establishes a minimum period that must elapse before non-union employees who enter the bargaining unit for the first time or who re-enter the bargaining unit must pay a representation fee. School boards could seek to negotiate periods longer than the thirty and ten day minimum periods stated in this section.

3. Termination of Employment

If an employee who is required to pay a representation fee terminates his or her employment with the Board before the Association has received the full amount of the representation fee to which it is entitled under this Article, the Board will deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.

This should be agreed to only if the Board must deduct the unpaid portion of the union dues from the last paycheck paid to union members during the membership year in question. The absence of equitable treatment for non-union and union members could raise some legal questions.

4. Mechanics

Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the Association will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the Association.

5. Changes

The Association will notify the Board in writing, of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than 10 days after the Board received said notice.

School boards should not agree to this language, which would permit the union to require the Board to change the amount of the fee with only ten days notice. School boards should not be required to deduct fees, the amount of which could be changed every ten days. Article B provides that the Association will notify the Board prior to the beginning of the membership year. Such notification, once a year, should suffice, and the amount of the fee should be set for the rest of the year; otherwise, countless administrative and clerical problems could occur.

6. New Employees

On or about the last day of each month, beginning with the month this agreement becomes effective, the Board will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list will include names, job titles and dates of employment for all such employees.

The date of employment should coincide with the effective date that the individual is placed on the payroll and not on the date that the school board approved his/her employment.